

**OFFICIAL CODE  
OF  
GEORGIA**  

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**ANNOTATED**



**VOLUME 21**

Title 25. Fire Protection and  
Safety

Title 26. Food, Drugs, and  
Cosmetics

2003 Edition



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# OFFICIAL CODE OF GEORGIA ANNOTATED

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With Provision for Subsequent Pocket Parts

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*Prepared by*  
The Code Revision Commission  
The Office of Legislative Counsel  
*and*  
The Editorial Staff of LexisNexis™



Published Under Authority of the State of Georgia

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## Volume 21 2003 Edition

Title 25. Fire Protection and Safety  
Title 26. Food, Drugs, and Cosmetics

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Including Acts of the 2003 Session of the General Assembly  
of Georgia and Annotations taken from the Georgia  
Reports and the Georgia Appeals Reports

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Charlottesville, Virginia  
2003

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ISBN 0-8205-9826-7

4189411



*I, Cathy Cox, Secretary of State of the State of Georgia, do hereby certify that* the statutory portion of the Official Code of Georgia Annotated contained in this volume is a true and correct copy of such material as enacted by the General Assembly of Georgia; all as same appear of file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed

the seal of my office, at the Capitol, in the City of Atlanta, this  
1st day of August, in the year of our Lord  
Two Thousand and Three  
and of the Independence of the United States of America the  
Two Hundred and Twenty-seventh.



*Cathy Cox*

SECRETARY OF STATE



## Preface

This volume cumulates and replaces the 1982 edition of Volume 21 of the Official Code of Georgia Annotated, as supplemented by the 2002 Cumulative Supplement. The 1982 Volume 21 and its 2002 Supplement may be recycled or, if so desired, retained for historical purposes.

This volume contains all laws specifically codified in Titles 25 and 26 by the General Assembly through the 2003 Session. This volume also contains case annotations reflecting decisions posted to LEXIS-NEXIS® through March 14, 2003. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter. As official and traditional citations become available, substitutions for the LEXIS-NEXIS® citations will be made.

Additionally, LexisNexis™ has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; Mercer Law Review; Georgia State Bar Journal; and American Law Reports. Also included where appropriate are cross-references to the Official Code of Georgia Annotated.

This volume retains amendment notes and effective date notes for Acts passed during the 2001, 2002, and 2003 Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2001 Session of the General Assembly, the user should consult the Georgia Laws.

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## **User's Guide**

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.





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**Cross references.** — Criminal penalties for transmitting false report of fire, transmitting a false public alarm and making restitution, or refusing to obey official request at fire or other emergency, §§ 16-10-27, 16-10-28, 16-10-30. Farmers' mutual fire insurance companies, Ch. 16, T. 33. Property insurance generally, Ch. 32, T. 33. Management of emergencies generally, Ch. 3, T. 38. Liability of officers and agents for acts performed while fighting fires or for acts performed at scenes of emergencies, § 51-1-30.



## CHAPTER 1

### GENERAL PROVISIONS

Sec.

25-1-1. Making available dynamite caps or like devices to minors; criminal and civil penalties.

**25-1-1. Making available dynamite caps or like devices to minors; criminal and civil penalties.**

(a) Any person, firm, or corporation who sells, gives, or otherwise makes available any dynamite cap or other similar device to a minor shall be guilty of a misdemeanor.

(b) In addition to the punishment provided in subsection (a) of this Code section, the license or permit to engage in the business of dealing in or to sell explosives of any person, firm, or corporation convicted of violating subsection (a) of this Code section shall automatically stand revoked and shall be null and void. (Ga. L. 1958, p. 306, §§ 1, 2.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 31A Am. Jur. 2d, Explosions and Explosives, §§ 67 et seq., 113 et seq.      **C.J.S.** — 35 C.J.S., Explosives, §§ 20 et seq., 71 et seq. 53 C.J.S., Licenses, § 50 et seq.



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**Administrative rules and regulations.** — Organization, practice and procedures of the Safety Fire Department, Official Compilation of Rules and Regulations of State of

Georgia, Rules of Comptroller General, Safety Fire Department, Chapter 120-3-1 et seq.

### OPINIONS OF THE ATTORNEY GENERAL

**O.C.G.A. Title 25, Chapter 2 not impliedly amended.** — Although Ga. L. 1973, p. 890 (see O.C.G.A. Title 42, Chapter 4, Article 2) deals, in part, with the same subject matter as Ga. L. 1949, p. 1057 (see O.C.G.A. Title 25, Chapter 2), i.e., fire safety standards for certain jails, the legislature, in enacting Ga. L. 1973, p. 890 (see O.C.G.A. Title 42,

Chapter 4, Article 2), did not intend to impliedly amend Ga. L. 1949, p. 1057 (see O.C.G.A. Title 25, Chapter 2) and such construction is not necessary for a reasonable interpretation of Ga. L. 1973, p. 890 (see O.C.G.A. Title 42, Chapter 4, Article 2). 1980 Op. Att'y Gen. No. 80-66.

#### 25-2-1. “Commissioner” defined.

As used in this chapter, the term “Commissioner” means the Safety Fire Commissioner.

#### 25-2-2. Safety Fire Commissioner — Office created.

The office of Safety Fire Commissioner is created. The Commissioner of Insurance shall be the Safety Fire Commissioner. (Ga. L. 1949, p. 1057, § 1; Ga. L. 1950, p. 320, § 1; Ga. L. 1986, p. 855, § 9.)

### JUDICIAL DECISIONS

**Cited in** Douglas v. Smith, 578 F.2d 1169 (5th Cir. 1978).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, §§ 42 et seq., 287, 387. 72 Am. Jur. 2d, States, Territories, and Dependencies § 61.

**C.J.S.** — 67 C.J.S., Officers and Public Employees, §§ 18, 282 et seq. 81A C.J.S., States, § 82.

#### 25-2-3. Safety Fire Commissioner — Duties and responsibilities generally; delegation of powers.

Except as provided in Code Section 25-2-12, the Commissioner is charged with the duties and chief responsibility for the enforcement of this chapter. He may, consistent with this chapter, delegate to the officers and employees appointed under this chapter such duties and powers as in his discretion he shall deem necessary or advisable for the proper enforcement of this chapter and shall have full supervision and control over such officers and employees in the performance of their duties or in the exercise of any powers granted to such officers and employees by him or by this chapter. Except as provided in Code Section 25-2-12, the Commissioner shall be the final authority in all matters relating to the interpretation and enforcement of this chapter, except insofar as his orders may be reversed or modified by the courts. (Ga. L. 1949, p. 1057, § 2; Ga. L. 1981, p. 1779, § 1.)



**Cross references.** — Manufactured homes generally, § 8-2-130 et seq.

### JUDICIAL DECISIONS

**Authorized actions.** — In the absence of the state fire marshal, the Safety Fire Commissioner was authorized to act on an application for a license to maintain a liquefied petroleum gas bulk distribution facility.

Safety Fire Comm'r v. U.S.A. Gas, Inc., 229 Ga. App. 807, 494 S.E.2d 706 (1997).

Cited in Douglas v. Smith, 578 F.2d 1169 (5th Cir. 1978).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, §§ 3, 230, 241.

**C.J.S.** — 67 C.J.S., Officers and Public Employees, §§ 224, 225.

## 25-2-4. Safety Fire Commissioner — Adoption of rules and regulations.

The Commissioner shall adopt such rules and regulations as he deems necessary to promote the enforcement of this chapter. Such rules and regulations shall have the force and effect of law and shall have state-wide application as being the state minimum fire safety standards and shall not require adoption by a municipality or county. The governing authority of any municipality or county in this state is authorized to enforce the state minimum fire safety standards on all buildings and structures except one-family and two-family dwellings and those buildings and structures listed in Code Section 25-2-13. All other applications of the state minimum fire safety standards and fees are specified in Code Sections 25-2-4.1, 25-2-12, and 25-2-12.1. Before the Commissioner shall adopt as a part of his rules and regulations for the enforcement of this chapter any of the principles of the various codes referred to in this chapter, he shall first consider and approve them as reasonably suitable for the enforcement of this chapter. Not less than 15 days before any rules and regulations are promulgated, a public hearing shall be held. Notice of the hearing shall be advertised in a newspaper of general circulation. (Ga. L. 1949, p. 1057, § 3; Ga. L. 1992, p. 2186, § 1.)

**Cross references.** — Complying with filing and hearing requirements by Safety Fire Commissioner and Commissioner of Insurance, § 50-13-21.

**Administrative rules and regulations.** — Rules of Practice and Procedure, Official

Compilation of Rules and Regulations of State of Georgia, Comptroller General, Chapter 120-3-2. (Pursuant to § 30-13-21, these regulations are on file in the Office of Commissioner of Insurance Safety Fire Department.)

### JUDICIAL DECISIONS

**Failure to comply with safety standards.** — The rules and regulations of the Safety Fire Commissioner, having the force and effect of law, were applicable to the landlord of an

apartment building and the landlord's failure to comply with mandatory safety provisions of a fire or building exit code provided a clear and convincing evidentiary basis for

an award of punitive damages. Windermere v. Bettes, 211 Ga. App. 177, 438 S.E.2d 406 (1993).  
Cited in Douglas v. Smith, 578 F.2d 1169

(5th Cir. 1978); Sadler v. Winn-Dixie Stores, Inc., 152 Ga. App. 763, 264 S.E.2d 291 (1979).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 1 et seq. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 61.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 1 et seq. 81A C.J.S., States, §§ 80, 124.

25-2-4.1. Safety Fire Commissioner — Fees and charges.

(a) The Commissioner is authorized to assess and collect, and persons so assessed shall pay in advance to the Commissioner, fees and charges under this chapter as follows:

- (1) New anhydrous ammonia permit for storage in bulk (more than 2,000 gallons aggregate capacity) for sale or distribution one-time fee .....

\$ 100.00
- (2) Annual license for manufacture of explosives other than fireworks .....

100.00
- (3) Annual license for manufacture, storage, or transport of fireworks .....

1,000.00
- (4) Carnival license .....

100.00
- (5) Certificate of occupancy .....

100.00
- (6) Construction plan review:

(A) Bulk storage construction .....

100.00

(B) Building construction, 10,000 square feet or less .....

100.00

(C) Building construction, more than 10,000 square feet .....

.015

per square foot

(D) Other construction .....

100.00
- (7) Fire sprinkler contractor certificate of competency .....

100.00
- (8) Liquefied petroleum gas storage license:

(A) 2,000 gallons or less .....

100.00

(B) More than 2,000 gallons .....

500.00
- (9) Building construction inspection:

(A) 80 percent completion, 100 percent completion, annual, and first follow-up .....

none

(B) Second follow-up .....	100.00
(C) Third and each subsequent follow-up .....	150.00
(10) Purchase, storage, sale, transport, or use of explosives other than fireworks:	
(A) 500 pounds or less .....	50.00
(B) More than 500 pounds .....	100.00
(11) New self-service gasoline station permit one-time fee ...	100.00
(12) New permit to dispense compressed natural gas (CNG) for vehicular fuel one-time fee .....	100.00

(b) The licenses and permits for which fees or charges are required pursuant to this Code section shall not be transferable. A new license or permit and fee are required upon change of ownership. (Code 1981, § 25-2-4.1, enacted by Ga. L. 1992, p. 2725, § 4; Ga. L. 1993, p. 448, § 1.)

**Code Commission notes.** — Pursuant to inserted between “one” and “time” in para-  
Code Section 28-9-5, in 1992, a hyphen was graph (11).

**25-2-5. State fire marshal — Appointment; qualifications; salary.**

The Commissioner shall appoint a state fire marshal. Qualifications for appointment as state fire marshal shall be previous training and experience in endeavors similar to those prescribed in this chapter. The Commissioner shall fix the salary of the state fire marshal. (Ga. L. 1949, p. 1057, § 4.)

**JUDICIAL DECISIONS**

**Cited in** Douglas v. Smith, 578 F.2d 1169  
(5th Cir. 1978).

**RESEARCH REFERENCES**

<b>Am. Jur. 2d.</b> — 63C Am. Jur. 2d, Public Officers and Employees, §§ 11, 48 et seq., 87 et seq., 275. 72 Am. Jur. 2d, States, Territo- ries and Dependencies, § 61.	<b>C.J.S.</b> — 67 C.J.S., Officers and Public Employees, §§ 22, 46, 53, 282 et seq. 81A C.J.S., States, § 84.
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**25-2-6. State fire marshal; head of Safety Fire Division.**

The Safety Fire Division of the office of Commissioner of Insurance shall be headed by the state fire marshal appointed by the Commissioner. (Ga. L. 1972, p. 1015, § 2; Ga. L. 1986, p. 855, § 10.)



**25-2-7. Appointment process of deputy state fire marshal and other personnel.**

The state fire marshal, subject to the approval of the Commissioner, shall appoint a deputy state fire marshal and administrative fire safety specialists and shall employ such office personnel as may be required to carry out this chapter. The deputy state fire marshal and administrative fire safety specialists shall be chosen by virtue of their previous training and experience in the particular duties which shall be assigned to them. They shall take an oath to perform faithfully the duties of their office. (Ga. L. 1949, p. 1057, § 5; Ga. L. 1981, p. 1779, § 2.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, §§ 11, 48 et seq., 87 et seq.

**C.J.S.** — 67 C.J.S., Officers and Public Officers, §§ 22, 46, 53.

**25-2-8. Payment of transportation, etc., expenses of employees in state fire marshal's office.**

All state employees connected with the state fire marshal's office shall be allowed subsistence, lodging, and other expenses in connection with the execution of their duties when away from their headquarters. Transportation for such employees shall be paid at the mileage rate fixed by law for other state employees. (Ga. L. 1949, p. 1057, § 27.)

**Cross references.** — Mileage, actual travel expenses for state officials and employees, and reimbursement, § 50-19-7.

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, §§ 278, 288.

**C.J.S.** — 67 C.J.S., Officers and Public Employees, § 270 et seq.

**25-2-9. Authority of fire marshal and employees to investigate cause and origin of fires; power to arrest.**

(a) Upon the request of the sheriff of the county, the chief of police of the jurisdiction, the district attorney of the judicial circuit, or a local fire official, the state fire marshal and any employees of such official shall have the authority to investigate the cause and origin of any fire which occurred in said county, jurisdiction, or judicial circuit.

(b) Personnel employed and authorized by the state fire marshal shall have the power to make arrests for criminal violations established as a result of investigations. Such personnel must hold certification as a peace officer from the Georgia Peace Officer Standards and Training Council and shall

have the power to execute arrest warrants and search warrants for criminal violations and to arrest, upon probable cause and without warrant, any person found violating any of the provisions of applicable criminal laws. Authorized personnel empowered to make arrests pursuant to this Code section shall be empowered to carry firearms as authorized by the state fire marshal in the performance of their duties. It shall be unlawful for any person to resist an arrest authorized by this Code section or to interfere in any manner, including abetting or assisting such resistance or interference, with personnel employed by the state fire marshal in the duties imposed upon such personnel by law. (Ga. L. 1963, p. 509, § 1; Ga. L. 1972, p. 966, § 1; Ga. L. 2003, p. 331, § 1.)

**The 2003 amendment**, effective May 29, 2003, rewrote this Code section.

**Cross references.** — Obstructing or hindering law enforcement officers, § 16-10-24.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 5 Am. Jur. 2d, Arrest, §§ 2 et seq., 25 et seq., 38, 47. 79 Am. Jur. 2d, Weapons and Firearms, §§ 9, 21.

**C.J.S.** — 6A C.J.S., Arrest, §§ 5-11, 16, 17. 94 C.J.S., Weapons, §§ 3 et seq., 22 et seq.

## 25-2-10. Appeal from rulings of state fire marshal to Commissioner; appeal from Commissioner to superior court; bond.

Should any person, firm, corporation, or public entity be dissatisfied with any ruling or decision of the state fire marshal, the right is granted to appeal within ten days to the Commissioner. If the person, firm, corporation, or public entity is dissatisfied with the decision of the Commissioner, appeal is authorized to the superior court within 30 days in the manner provided under Chapter 13 of Title 50. In the event of such appeal, the person, firm, corporation, or public entity shall give a surety bond which will be conditioned upon compliance with the order and direction of the state fire marshal or the Commissioner or both. The amount of bond shall be fixed by the Commissioner in such amount as will reasonably cover the order issued by the Commissioner or the state fire marshal or both. (Ga. L. 1949, p. 1057, § 29; Ga. L. 1959, p. 50, § 2; Ga. L. 1972, p. 894, § 1.)

### JUDICIAL DECISIONS

**Court cannot substitute judgment for Commissioner.** — Even if the procedures of the Safety Fire Commissioner in acting on an application for a license to maintain a liquefied petroleum gas bulk distribution facility

were flawed, the superior court could not substitute its own judgment for that of the Commissioner. *Safety Fire Comm'r v. U.S.A. Gas, Inc.*, 229 Ga. App. 807, 494 S.E.2d 706 (1997).



## RESEARCH REFERENCES

**Am. Jur. 2d.** — 2 Am. Jur. 2d, Administrative Law, §§ 369, 374 et seq., 424. 63C Am. Jur. 2d, Public Officers and Employees, § 3.

**C.J.S.** — 73A C.J.S., Public Administrative Law and Procedure, § 166 et seq. 67 C.J.S., Officers and Public Employees, §§ 224, 225.

**25-2-11. Local inspections — Duty of cities and counties generally; assistance of cities and counties by state fire marshal.**

Repealed by Ga. L. 1981, p. 1779, § 8, effective April 1, 1982.

**25-2-12. Adoption of state fire safety standards and enforcement; investigations; excuse from compliance with standards; interpretation of standards and granting variances therefrom by Commissioner.**

(a)(1) The county governing authority in any county having a population of 100,000 or more, and the municipal governing authority in any municipality having a population of 45,000 or more, each as determined by the most recent decennial census published by the United States Bureau of the Census, and those municipalities pursuant to subsection (b) of this Code section shall adopt the state minimum fire safety standards adopted in the rules and regulations promulgated pursuant to this chapter, including all subsequent revisions thereof.

(2) With respect to those buildings and structures listed in Code Section 25-2-13, except for hospitals, nursing homes, jails, ambulatory health care centers, and penal institutions and except for buildings and structures which are owned and operated or occupied by the state, every such local governing authority shall be responsible for enforcing such fire safety standards within its jurisdiction and shall:

(A) Conduct fire safety inspections of existing buildings and structures;

(B) Review plans and specifications for proposed buildings and structures, issue building permits when plans are approved, and conduct fire safety inspections of such buildings and structures; and

(C) Issue permanent and temporary certificates of occupancy.

(3) Nothing in this subsection shall be construed so as to prohibit fire service personnel of any such local governing authority from making inspections of any state owned and operated or occupied building or structure listed in Code Section 25-2-13 and from filing reports of such inspections with the office of the Commissioner.

(4) Nothing in this subsection shall be construed so as to place upon any municipality, county, or any officer or employee thereof, the responsibility to take enforcement action regarding any existing building or structure listed in Code Section 25-2-13, if such building or structure was

granted a certificate of occupancy pursuant to a waiver granted prior to January 1, 1982, and which was granted pursuant to the recommendation of the engineering staff over the objection of the local authority having jurisdiction.

(5) Every such local governing authority shall have the authority to charge and retain appropriate fees for performing the duties required in subparagraphs (A) and (B) of paragraph (2) of this subsection. In cases where the governing authority of a municipality enforcing fire safety standards pursuant to this subsection contracts for the enforcement of fire safety standards, any municipal or county office or authority providing such enforcement shall not charge fees in excess of those charged in its own political subdivision for such enforcement.

(6) Every such local governing authority shall be responsible for investigating all cases of arson and other suspected incendiary fires within its jurisdiction, shall have the duties and powers authorized by Code Sections 25-2-27, 25-2-28, and 25-2-29 in carrying out such responsibility, and shall submit quarterly reports to the state fire marshal containing fire-loss data regarding all fires within its jurisdiction. The state fire marshal shall have the authority to initiate any arson investigation upon request of any such local governing authority and he shall provide assistance to the requesting authority regarding any of the duties and responsibilities required by this paragraph.

(7) No such local governing authority shall have the authority to grant any waiver or variance which would excuse any building, structure, or proposed plans for buildings or structures from compliance with the state minimum fire safety standards as adopted in the rules and regulations promulgated pursuant to this chapter.

(b) Municipalities having a population of less than 45,000 as determined by the most recent decennial census published by the United States Bureau of the Census may adopt the state minimum fire safety standards adopted in the rules and regulations promulgated pursuant to this chapter, including all subsequent revisions thereof. The municipal governing authority shall indicate its intention to adopt and enforce the state minimum fire safety standards by forwarding a resolution so indicating to the Commissioner. The municipality shall then adopt and enforce the state minimum fire safety standards as set forth in subsection (a) of Code Section 25-2-12.

(c) With respect to those buildings and structures listed in Code Section 25-2-13, in jurisdictions other than those jurisdictions covered under subsection (a) of this Code section, and with respect to every such hospital and every such building and structure owned and operated or occupied by the state, wherever located, the office of the Commissioner shall perform those duties specified in paragraph (2) of subsection (a) of this Code section and shall perform all other duties required by this chapter.

(d) Except as specifically stated in this Code section, nothing in this Code section shall reduce or avoid the duties and responsibilities of the

office of the Commissioner or the state fire marshal imposed by other Code sections of this chapter, other provisions of this Code, or any existing contract or agreement and all renewals thereof between the office of the Commissioner or the state fire marshal and any other state or federal government agency. Nothing in this Code section shall prohibit the office of the Commissioner, state fire marshal, or any local governing authority from entering into any future contract or agreement regarding any of the duties imposed under this Code section.

(e)(1) The office of the Commissioner shall be responsible for interpretations of the state minimum fire safety standards as adopted in the rules and regulations promulgated pursuant to this chapter.

(2) On the construction on existing buildings, local governments authorized to enforce the state minimum fire safety standards pursuant to subsection (a) and subsection (b) of this Code section, notwithstanding paragraph (7) of subsection (a) of this Code section, may grant variances from compliance with the state minimum fire safety standards as adopted in the rules and regulations promulgated pursuant to this chapter.

(3) On the construction on existing buildings not under the jurisdiction of a local government for purposes of paragraph (2) of this subsection, the Commissioner may grant variances from compliance with the state minimum fire safety standards as adopted in the rules and regulations promulgated pursuant to this chapter.

(4) On the construction of new buildings, the Commissioner, upon the written recommendation of the state fire marshal and the written request of the fire or building official responsible for enforcing the state minimum fire safety standards, may grant variances from compliance with the state minimum fire safety standards as adopted in the rules and regulations promulgated pursuant to this chapter in jurisdictions covered under subsection (a) of this Code section and jurisdictions other than those covered under subsection (a) of this Code section.

(5) Variances granted pursuant to paragraphs (2), (3), and (4) of this subsection shall be as nearly equivalent as practical to the standards required in this chapter. (Ga. L. 1949, p. 1057, § 6; Ga. L. 1981, p. 1779, § 3; Ga. L. 1982, p. 479, §§ 1, 4; Ga. L. 1984, p. 1160, § 2; Ga. L. 1985, p. 721, §§ 1, 2; Ga. L. 1992, p. 2186, § 2.)

### JUDICIAL DECISIONS

**City required to enforce fire safety standards against county building project within city limits.** — A county government is exempt from all municipal regulation of construction projects undertaken by the county with respect to county-owned property lo-

cated within the city and used for governmental purposes, but they are subject to other municipal regulations as indicated by the Georgia General Assembly such as fire safety standards, O.C.G.A. § 25-2-12, or compliance with the Erosion and Sedimentation



Act, O.C.G.A. § 12-7-1 et seq. City of Decatur v. DeKalb County, 256 Ga. App. 46, 567 S.E.2d 376 (2002).

### OPINIONS OF THE ATTORNEY GENERAL

**Implied power of repeal.** — Where O.C.G.A. § 25-2-12(b) provides that certain municipal governing authorities may adopt and enforce the state minimum fire safety standards, it is implicit from the authorization to enact such an ordinance that the power to repeal is also provided to these authorities. 1982 Op. Att’y Gen. No. 82-66.

**Duties of Commissioner as to buildings**

**presenting special hazards.** — The Commissioner is charged with specific duties with respect to those buildings listed in O.C.G.A. § 25-2-13 by the provisions of O.C.G.A. § 25-2-12(c), which duties include performing fire safety inspections, reviewing building plans and specifications, and issuing certificates of occupancy. 1990 Op. Att’y Gen. No. 90-4.

### RESEARCH REFERENCES

**ALR.** — Zoning: creation by statute or ordinance of restricted residence districts within municipality from which business buildings are excluded, 33 ALR 287; 38 ALR 1496; 43 ALR 668; 54 ALR 1030; 86 ALR 659; 117 ALR 1117.

Condemnation of premises by public authorities because of unsafe or unsanitary condition as affecting the liability of the

tenant for rent, 37 ALR 1170.

Liability of owner or occupant of premises to building or construction inspector coming upon premises in discharge of duty, 28 ALR3d 891.

Municipal liability for negligent fire inspection and subsequent enforcement, 69 ALR4th 739.

### **25-2-12.1. Deputizing of local fire marshals, deputy local fire marshals, and state inspectors as state officers; qualification of applicants; duty to notify state fire marshal of change in employment status of deputized officers; removal.**

(a) As used in this Code section, the term:

(1) “Deputy local fire marshal” means any person who is employed by, supervised by, or otherwise assists a local fire marshal and who has been or is seeking to be deputized pursuant to this Code section.

(2) “Local fire marshal” means any employee or independent contractor of any municipality, county, or other governing authority not adopting the state minimum fire safety standards as provided in subsection (a) of Code Section 25-2-12 who is responsible for performing fire safety duties for such municipality, county, or governing authority and who has been or is seeking to be deputized pursuant to this Code section.

(3) “State inspector” means any person who is employed by any board, commission, or other administrative authority of any state owned and operated or occupied facility, who is responsible for performing fire safety duties within such facility, and who has been or is seeking to be deputized pursuant to this Code section.

(b) Upon application submitted by any governing authority or administrative authority described in subsection (a) of this Code section, the state fire marshal, subject to the approval of the Commissioner and in accordance with this Code section, shall have the authority to deputize local fire marshals, deputy local fire marshals, or state inspectors, as appropriate, as state officers. The application shall be verified by an appropriate official and shall contain the name, address, and current place of employment for each applicant seeking to be deputized and the dates and places of past employment, educational background, training experience, any area of specialization and the basis therefor, and such other information as may be required by the state fire marshal.

(c)(1) Prior to deputizing any local fire marshal, deputy local fire marshal, or state inspector, the state fire marshal shall examine the applicant's education, training, and employment experience to ascertain whether the applicant is qualified to perform duties in one or more of the following areas:

- (A) Fire safety inspections;
- (B) Review of plans and specifications; or
- (C) Arson investigations.

(2) If the state fire marshal is satisfied that the applicant is qualified, he shall recommend to the Commissioner that the applicant be deputized as a state officer to perform the appropriate duties on behalf of the state.

(d) It shall be the responsibility of the governing authority to notify the state fire marshal when a local fire marshal is no longer employed by or accountable to such governing authority. It shall be the responsibility of the local fire marshal to ensure that his deputy local fire marshals perform their appointed duties and to notify the state fire marshal when a deputy local fire marshal is no longer employed under his authority. It shall be the responsibility of the administrative authority to ensure that state inspectors perform their appointed duties and to notify the state fire marshal when a state inspector is no longer employed by such administrative authority.

(e) All deputized local fire marshals, deputy local fire marshals, and state inspectors shall submit monthly reports of their activities to the state fire marshal and shall comply with the administrative procedures of the state fire marshal's office. Any deputized local fire marshal, deputy local fire marshal, or state inspector who is found by the state fire marshal to be negligent in performing his appointed duties or in fulfilling his responsibilities shall be removed from his position as a state officer. (Ga. L. 1981, p. 1779, § 4; Ga. L. 1982, p. 3, § 25; Ga. L. 1982, p. 479, §§ 2, 5.)

**25-2-13. Buildings presenting special hazards to persons or property; requirements as to construction, maintenance, and use generally; effect of rules, regulations, and fire safety standards issued before April 1, 1968; power of local governing authorities.**

(a) As used in this Code section, the term:

(1) "Capacity" means the maximum number of persons who may be reasonably expected to be present in any building or on any floor thereof at a given time according to the use which is made of such building. The Commissioner shall determine and by rule declare the formula for determining capacity for each of the uses described in this Code section.

(2) "Historic building or structure" means any individual building or any building which contributes to the historic character of a historic district, so designated by the state historic preservation officer pursuant to rules and regulations adopted by the Board of Natural Resources, or as so designated pursuant to the provisions of Article 2 of Chapter 10 of Title 44, the "Georgia Historic Preservation Act."

(3) "Landmark museum building" means a historic building or structure used as an exhibit of the building or structure itself which exhibits a high degree of architectural integrity and which is open to the public not fewer than 12 days per year; however, additional uses, original or ancillary, to the use as a museum shall be permitted within the same building subject to the provisions of paragraph (3) of subsection (b) of this Code section. Landmark museum buildings must be so designated by the state historic preservation officer pursuant to rules and regulations adopted by the Board of Natural Resources.

(b)(1) Certain buildings and structures, because of construction or use, may constitute a special hazard to property or to the life and safety of persons on account of fire or panic from fear of fire. Buildings constructed or used in the following manner present such a special hazard:

(A) Buildings or structures more than three stories in height; provided, however, that nothing in this Code section shall apply to any individually owned residential unit within any such building;

(B) Any building three or more stories in height and used as a residence by three or more families, with individual cooking and bathroom facilities for each family; provided, however, that nothing in this Code section shall apply to any individually owned residential unit within any such building;

(C) Any building in which there are more than 15 sleeping accommodations for hire, with or without meals but without individual cooking facilities, whether designated as a hotel, motel, inn, club, dormitory, rooming or boarding house, or by any other name;



(D) Any building or group of buildings which contain schools and academies for any combination of grades one through 12 having more than 15 children or students in attendance at any given time and all state funded kindergarten programs;

(E) Hospitals, health care centers, mental health institutions, orphanages, nursing homes, convalescent homes, old age homes, jails, prisons, reformatories, and all administrative, public assembly, and academic buildings of colleges, universities, and vocational-technical schools. As used in this subparagraph, the terms "nursing homes," "convalescent homes," and "old age homes" mean any building used for the lodging, personal care, or nursing care on a 24 hour basis of four or more invalids, convalescents, or elderly persons who are not members of the same family;

(F) Racetracks, stadiums, and grandstands;

(G) Theaters, auditoriums, restaurants, bars, lounges, nightclubs, dance halls, recreation halls, and other places of public assembly having an occupant load of 300 or more persons, except that the occupant load shall be 100 or more persons in those buildings where alcoholic beverages are served;

(G.1) Churches having an occupant load of 500 or more persons in a common area or having an occupant load greater than 1,000 persons based on total occupant load of the building or structure;

(H) Department stores and retail mercantile establishments having a gross floor area of 25,000 square feet on any one floor or having three or more floors that are open to the public. For purposes of this subparagraph, shopping centers and malls shall be assessed upon the basis of the entire area covered by the same roof or sharing common walls; provided, however, that nothing in this Code section shall apply to single-story malls or shopping centers subdivided into areas of less than 25,000 square feet by a wall or walls with a two-hour fire resistance rating and where there are unobstructed exit doors in the front and rear of every such individual occupancy which open directly to the outside;

(I) Group day-care homes and day-care centers required to be licensed or commissioned as such by the Department of Human Resources and in which at least seven children receive care. As used in this subparagraph, the term "group day-care home" means a day-care facility subject to licensure by the Department of Human Resources where at least seven but not more than 12 children receive care; and the term "day-care center" means a day-care facility subject to licensure or issuance of a commission by the Department of Human Resources where more than 12 children receive care. Fire safety standards adopted by rules of the Commissioner pursuant to Code Section 25-2-4

which are applicable to group day-care homes and day-care centers shall not require staff-to-child ratios; and

(J) Personal care homes required to be licensed as such by the Department of Human Resources and having at least seven beds for nonfamily adults, and the Commissioner shall, pursuant to Code Section 25-2-4, by rule adopt state minimum fire safety standards for those homes, and any structure constructed as or converted to a personal care home on or after April 15, 1986, shall be deemed to be a proposed building pursuant to subsection (d) of Code Section 25-2-14 and that structure may be required to be furnished with a sprinkler system meeting the standards established by the Commissioner if he deems this necessary for proper fire safety.

(2) Any building or structure which is used exclusively for agricultural purposes and which is located in an unincorporated area shall be exempt from the classification set forth in paragraph (1) of this subsection.

(3)(A) The provisions of this paragraph relating to landmark museum buildings shall apply only to those portions of such buildings which meet all the requirements of a landmark museum building, except as otherwise provided in subparagraphs (B) and (C) of this paragraph. Subparagraphs (B) and (C) of this paragraph shall, unless otherwise provided in such subparagraphs, preempt all state laws, regulations, or rules governing reconstruction, alteration, repair, or maintenance of landmark museum buildings. Local governing authorities may recognize the designation of landmark museum buildings by ordinance and authorize the local enforcement authority to incorporate the provisions of subparagraphs (B) and (C) of this paragraph into their local building and fire codes. Subparagraphs (D) and (E) of this paragraph shall apply to other historic buildings or structures.

(B) A landmark museum building shall be subject to the following provisions:

(i) Repairs, maintenance, and restoration shall be allowed without conformity to any state building or fire safety related code, standard, rule, or regulation, provided the building is brought into and remains in full compliance with this paragraph;

(ii) In the case of fire or other casualty to a landmark museum building, it may be rebuilt, in total or in part, using such techniques and materials as are necessary to restore it to the condition prior to the fire or casualty and use as a totally preserved building; or

(iii) If a historic building or structure, as a result of proposed work or changes in use, would become eligible and would be so certified as a landmark museum building, and the state historic preservation officer so certifies and such is submitted to the state fire



and building code official with the construction or building permit application, then the work may proceed under the provisions of this paragraph.

(C) All landmark museum buildings shall comply with the following requirements:

(i) Every landmark museum building shall have portable fire extinguishers as deemed appropriate by the state or local fire authority having jurisdiction based on the applicable state or local fire safety codes or regulations;

(ii) All landmark museum buildings which contain residential units shall have electrically powered smoke or products of combustion detectors installed within each living unit between living and sleeping areas. Such detectors shall be continuously powered by the building's electrical system. When activated, the detector shall initiate an alarm which is audible in sleeping rooms of that living unit. These unit detectors shall be required in addition to any other protective system that may be installed in the building;

(iii) For all landmark museum buildings, except those protected by a total automatic fire suppression system and one and two family dwellings, approved automatic fire warning protection shall be provided as follows: install at least one listed smoke or products of combustion detector for every 1,200 square feet of floor area per floor or story. In addition, all lobbies, common corridors, hallways, and ways of exit access shall be provided with listed smoke or products of combustion detectors not more than 30 feet apart. Detectors shall be so connected as to sound an alarm audible throughout the structure or building. With respect to buildings which are totally protected by an automatic fire suppression system, activation of the sprinkler system shall sound an alarm throughout the structure or building;

(iv) Smoke or products of combustion detectors shall be listed by a nationally recognized testing laboratory;

(v) All multistory landmark museum buildings, except one and two family dwellings, with occupancy above or below the street or grade level shall have manual fire alarm pull stations in the natural path of egress. The activation of a manual pull station shall cause the building fire warning system to sound;

(vi) Approved exit signs shall be located where designated by the local or state authority having jurisdiction in accordance with the applicable state or local code, standard, rule, or regulation;

(vii) Except for one and two family dwellings, every landmark museum building occupied after daylight, or which has occupied

areas subject to being totally darkened during daylight hours due to a power failure or failure of the electrical system, shall be equipped with approved emergency lighting meeting the provisions of the applicable state or local code, standard, rule, or regulation;

(viii) Occupant loading of landmark museum buildings or structures shall be limited by either the actual structural floor load capacity or by the limitations of means of egress or by a combination of factors. Actual floor load capacity shall be determined by a Georgia registered professional engineer. Said floor load shall be posted at a conspicuous location. The building owner shall submit evidence of this certification and related computations to the enforcement authority having jurisdiction, upon request. Where one or more floors of a landmark museum building have only one means of egress, the occupant load shall be computed and occupancy limited as determined by the state or local fire marshal; and

(ix) The electrical, heating, and mechanical systems of landmark museum buildings shall be inspected and any conditions that create a threat of fire or a threat to life shall be corrected in accordance with applicable standards to the extent deemed necessary by the state or local authority having jurisdiction.

(D) Historic buildings not classified as landmark museum buildings shall meet the requirements of applicable state or local building and fire safety laws, ordinances, codes, standards, rules, or regulations as they pertain to existing buildings. If a historic building or structure is damaged from fire or other casualty, it may be restored to the condition prior to the fire or casualty using techniques and methods consistent with its original construction, or it shall meet the requirements for new construction of the applicable state or local codes, standards, rules, or regulations, provided these requirements do not significantly compromise the features for which the building was considered historically significant.

(E) As to any buildings or structures in the State of Georgia which meet the criteria of paragraph (1) of subsection (b) of this Code section and thus fall under the jurisdiction of the Safety Fire Commissioner and which also have been designated as historically significant by the state historic preservation officer, the appropriate enforcement official, in granting or denying a variance pursuant to subsection (e) of Code Section 25-2-12, shall consider the intent of this chapter, with special attention to paragraph (3) of this subsection, Article 3 of Chapter 2 of Title 8, "The Uniform Act for the Application of Building and Fire Related Codes to Existing Buildings," Article 2 of Chapter 10 of Title 44, the "Georgia Historic Preservation Act," and the Secretary of Interior's Standards for Preservation Projects.

(4) Nothing in this subsection shall be construed as exempting any building, structure, facility, or premises from ordinances enacted by any

municipal governing authority in any incorporated area or any county governing authority in any unincorporated area, except to the extent stated in paragraph (3) of this subsection relative to landmark museum buildings or historic buildings or structures.

(c) Every person who owns or controls the use of any building, part of a building, or structure described in paragraph (1) of subsection (b) of this Code section, which, because of floor area, height, location, use or intended use as a gathering place for large groups, or use or intended use by or for the aged, the ill, the incompetent, or the imprisoned, constitutes a special hazard to property or to the life and safety of persons on account of fire or panic from fear of fire, must so construct, equip, maintain, and use such building or structure as to afford every reasonable and practical precaution and protection against injury from such hazards. No person who owns or controls the use or occupancy of such a building or structure shall permit the use of the premises so controlled for any such specially hazardous use unless he has provided such precautions against damage to property or injury to persons by these hazards as are found and determined by the Commissioner in the manner described in subsection (d) of this Code section to be reasonable and practical.

(d) The Commissioner is directed to investigate and examine construction and engineering techniques; properties of construction materials, fixtures, facilities, and appliances used in, upon, or in connection with buildings and structures; and fire prevention and protective techniques, including, but not limited to, the codes and standards adopted, recommended, or issued from time to time by the National Fire Protection Association (National Fire Code and National Electric Code), the American Insurance Association (National Building Code), the successor to the National Board of Fire Underwriters, the American Standards Association, and the Standard Building Code Congress (Southern Standard Building Code). Based upon such investigation, the Commissioner is authorized to determine and by rule to provide what reasonable and practical protection must be afforded property and persons with respect to: exits; fire walls and internal partitions adequate to resist fire and to retard the spread of fire, smoke, heat, and gases; electrical wiring, electrical appliances, and electrical installations; safety and protective devices, including, but not limited to, fire escapes, fire prevention equipment, sprinkler systems, fire extinguishers, panic hardware, fire alarm and detection systems, exit lights, emergency auxiliary lights, and other similar safety devices; flameproofing; motion picture equipment and projection booths; and similar facilities; provided, however, that any building described in subparagraph (b)(1)(C) of this Code section shall be required to have a smoke or products of combustion detector listed by a nationally recognized testing laboratory; and, regardless of the manufacturer's instructions, such detectors in these buildings shall be located in all interior corridors, halls, and basements no more than 30 feet apart or more than 15 feet from any wall; where there are no interior



halls or corridors, the detectors shall be installed in each sleeping room. All detection systems permitted after April 1, 1992, shall be powered from the building's electrical system and all detection systems required by this chapter, permitted after April 1, 1992, shall have a one and one-half hour emergency power supply source. Required corridor smoke detector systems shall be electrically interconnected to the fire alarm, if a fire alarm is required. If a fire alarm is not required, the detectors at a minimum shall be approved single station detectors powered from the building electrical service.

(e) All rules and regulations promulgated before April 1, 1968, by the Commissioner or the state fire marshal and the minimum fire safety standards adopted therein shall remain in full force and effect where applicable until such time as they are amended by the appropriate authority.

(f) The municipal governing authority in any incorporated area or the county governing authority in any unincorporated area of the state shall have the authority to enact such ordinances as it deems necessary to perform fire safety inspections and related activities for those buildings and structures not covered in this Code section.

(g) Notwithstanding any other provision of law or any local ordinance to the contrary, in the event of a conflict between any code or standard of the National Fire Protection Association (National Fire Code and National Electric Code) and of the Standard Building Code Congress (Southern Standard Building Code), the code or standard of the National Fire Protection Association (National Fire Code and National Electric Code) shall prevail. The order of precedence established by this subsection shall apply to all buildings and structures whether or not such buildings and structures are covered under this Code section. (Ga. L. 1949, p. 1057, § 8; Ga. L. 1967, p. 619, § 1; Ga. L. 1981, p. 1779, §§ 5, 6; Ga. L. 1982, p. 3, § 25; Ga. L. 1984, p. 1160, §§ 3-6; Ga. L. 1985, p. 149, § 25; Ga. L. 1985, p. 869, § 1; Ga. L. 1985, p. 936, §§ 1, 2; Ga. L. 1985, p. 1642, § 2; Ga. L. 1987, p. 3, § 25; Ga. L. 1988, p. 668, § 1; Ga. L. 1989, p. 815, §§ 1, 2; Ga. L. 1989, p. 918, § 1; Ga. L. 1989, p. 1795, § 2; Ga. L. 1990, p. 1500, § 1; Ga. L. 1992, p. 2186, §§ 3, 4; Ga. L. 1996, p. 1632, § 2.)

**Cross references.** — Construction standards and requirements for buildings and other structures generally, Ch. 2, T. 8. Duties of Commissioner with regard to enforcement of laws relating to access to and use of public buildings and facilities by the physically disabled, § 30-3-5. Required safety and security measures for detention facilities, § 42-4-31.

**Code Commission notes.** — Owing to the duplication in subparagraph designations, the subparagraph (b)(1)(I) added by Ga. L.

1985, p. 869, § 1 was redesignated subparagraph (b)(1)(J), pursuant to Code Section 28-9-5. Also, pursuant to Code Section 28-9-5, in the text of present subparagraph (b)(1)(J) "April 15, 1986" was substituted for "this subparagraph becomes effective".

Pursuant to Code Section 28-9-5, in 1988, a comma was added following "reformatories" in subparagraph (b)(1)(E).

**Editor's notes.** — Ga. L. 1985, p. 1642, § 3, not codified by the General Assembly, provided that nothing in that Act would

amend or repeal the definitions contained in Chapter 5 of Title 49.

**Administrative rules and regulations.** — Criteria for designation, Official Compilation of the Rules and Regulations of the

State of Georgia, Designation of Historic Buildings and Landmark Museum Buildings, Georgia Department of Natural Resources, § 391-5-8.02.

### JUDICIAL DECISIONS

**Cited in** *Sadler v. Winn-Dixie Stores, Inc.*, 152 Ga. App. 763, 264 S.E.2d 291 (1979); *Tempo Mgt., Inc. v. DeKalb County*, 258 Ga.

713, 373 S.E.2d 622 (1988); *Wadkins v. Smallwood*, 243 Ga. App. 134, 530 S.E.2d 498 (2000).

### OPINIONS OF THE ATTORNEY GENERAL

**Authority of Board of Offender Rehabilitation to set standard for construction of prison dormitories.** — The Board of Offender Rehabilitation has authority to require construction of a prison dormitory of any standard, so long as the standard is not below that set by the Georgia Safety Fire Commission. 1954-56 Op. Att'y Gen. p. 526.

**The authority of the Commissioner to investigate potential fire hazards upon written complaint** under O.C.G.A. § 25-2-22(b) is not limited to the buildings and premises listed in O.C.G.A. § 25-2-13, nor otherwise limited as to type of building or premises. 1990 Op. Att'y Gen. 90-4.

**Duties of Commissioner as to O.C.G.A. § 25-2-13.** — The Commissioner is charged with specific duties with respect to those buildings listed in O.C.G.A. § 25-2-13 by the provisions of O.C.G.A. § 25-2-12(c), which duties include performing fire safety inspections, reviewing building plans and specifications, and issuing certificates of occupancy. 1990 Op. Att'y Gen. No. 90-4.

**Commissioner has no duty to inspect certain abandoned buildings.** — An abandoned building, which is three stories or less in height, which does not otherwise fall within the list of buildings in O.C.G.A. § 25-2-13 is not subject to inspection and licensing under O.C.G.A. § 25-2-12. The Commissioner therefore has no duty to inspect such a building. 1990 Op. Att'y Gen. No. 90-4.

**Safety Fire Commissioner has authority to adopt rules and regulations which pertain to safety and protection of public at race tracks** so long as there is a relationship between the rules and regulations adopted and the duties and responsibilities entrusted to the Com-

missioner under the Safety Fire Commissioner Act. 1969 Op. Att'y Gen. No. 69-355.

**Jurisdiction over condominiums.** — The plain language of the 1981 amendments to O.C.G.A. § 25-2-13 clearly demonstrates the legislative intention to exclude condominiums from the jurisdiction of the Commissioner. The passage of the amendment indicates that the General Assembly believed that the previous exclusion failed to include condominiums, and hence felt some need to broaden that exclusion. 1981 Op. Att'y Gen. No. 81-49.

The office of the Commissioner has jurisdiction only over the common areas or elements (such as boiler rooms or recreation facilities) of condominium buildings otherwise classified as constituting a special hazard to the life and safety of persons in the event of fire. 1981 Op. Att'y Gen. No. 81-49.

**Permit applicant to obtain approval of fire marshal before permit issued.** — Ga. L. 1967, p. 619, § 2 (see O.C.G.A. § 25-2-14) imposes a duty on local governments to refrain from issuing a building permit for the construction of a proposed building which comes under classification in Ga. L. 1967, p. 619, § 1 (see O.C.G.A. § 25-2-13) until the permit applicant has obtained the approval of the fire marshal, in accordance with Ga. L. 1967, p. 619, § 2 (see O.C.G.A. § 25-2-14). 1980 Op. Att'y Gen. No. 80-102.

**Board of regents** should continue to submit to state fire marshal only those plans and specifications for proposed buildings which come under classifications set out in O.C.G.A. § 25-2-13. 1982 Op. Att'y Gen. No. 82-65.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Buildings, §§ 23, 24. 58 Am. Jur. 2d, Nuisances, §§ 163 et seq., 173 et seq., 198 et seq.

**C.J.S.** — 39A C.J.S., Health & Environment, § 28. 66 C.J.S., Nuisances, § 38.

**ALR.** — Constitutionality of statute or ordinance requiring proprietor of place of amusement to furnish fire or police protection at his own expense, 8 ALR 1628.

Power to require closing of place of amusement or other place of public assem-

bly because of fire hazard or unsanitary conditions, 140 ALR 1048.

Validity, construction, and application of the Uniform Fire Code, 46 ALR5th 479.

Validity, construction, and effect of agreement exempting operator of amusement facility from liability for personal injury or death of patron, 54 ALR5th 513.

Validity and construction of statute or ordinance requiring installation of automatic sprinklers, 63 ALR5th 517.

**25-2-14. Buildings presenting special hazards to persons or property — Requirement, issuance, etc., of building permits and certificates of occupancy; fees.**

(a) Plans and specifications for all proposed buildings which come under classification in paragraph (1) of subsection (b) of Code Section 25-2-13 and which come under the jurisdiction of the office of the Commissioner pursuant to Code Section 25-2-12 shall be submitted to and receive approval by either the state fire marshal, the proper local fire marshal, or state inspector before any state, municipal, or county building permit may be issued or construction started. All such plans and specifications submitted as required by this subsection shall be accompanied by a fee in the amount provided in Code Section 25-2-4.1 and shall bear the seal and Georgia registration number of the drafting architect or engineer or shall otherwise have the approval of the Commissioner.

(b) A complete set of approved plans and specifications shall be maintained on the construction site, and construction shall proceed in compliance with the minimum fire safety standards under which such plans and specifications were approved. The owner of any such building or structure or his authorized representative shall notify the state fire marshal, the proper local fire marshal, or state inspector upon completion of approximately 80 percent of the construction thereof and shall apply for a certificate of occupancy when construction of such building or structure is completed.

(c) Every building or structure which comes under classification in paragraph (1) of subsection (b) of Code Section 25-2-13 and which comes under the jurisdiction of the office of the Commissioner pursuant to Code Section 25-2-12 shall have a certificate of occupancy issued by the state fire marshal, the proper local fire marshal, or the state inspector before such building or structure may be occupied. Such certificates of occupancy shall be issued for each business establishment within the building, shall carry a charge in the amount provided in Code Section 25-2-4.1, shall state the occupant load for such business establishment or building, shall be posted



in a prominent location within such business establishment or building, and shall run for the life of the building, except as provided in subsection (d) of this Code section.

(d) For purposes of this chapter, any existing building or structure listed in paragraph (1) of subsection (b) of Code Section 25-2-13 and which comes under the jurisdiction of the office of the Commissioner pursuant to Code Section 25-2-12 shall be deemed to be a proposed building in the event such building or structure is subject to substantial renovation, a fire or other hazard of serious consequence, or a change in the classification of occupancy. For purposes of this subsection, the term “substantial renovation” means any construction project involving exits or internal features of such building or structure costing more than the building’s or structure’s assessed value according to county tax records at the time of such renovation.

(e) In cases where the governing authority of a municipality which is enforcing the fire safety standards pursuant to subsection (a) of Code Section 25-2-12 contracts with the office of the Commissioner for the enforcement of fire safety standards, the office of the Commissioner shall not charge such municipality fees in excess of those charged in this Code section. (Ga. L. 1949, p. 1057, § 9; Ga. L. 1967, p. 619, § 2; Ga. L. 1981, p. 1779, § 7; Ga. L. 1982, p. 3, § 25; Ga. L. 1982, p. 479, §§ 3, 6; Ga. L. 1992, p. 2186, § 5; Ga. L. 1992, p. 2725, § 5.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Term “building permit”** is used in reference to permits issued by local governments. 1980 Op. Att’y Gen. No. 80-102.

**Permit applicant to obtain approval of fire marshal before permit issued.** — Ga. L. 1967, p. 619, § 2 (see O.C.G.A. § 25-2-14) imposes a duty on local governments to refrain from issuing a building permit for the construction of a proposed building which comes under classification in Ga. L. 1967, p. 619, § 1 (see O.C.G.A. § 25-2-13) until the permit applicant has obtained the approval of the fire marshal in accordance with Ga. L. 1967, p. 619, § 2 (see O.C.G.A. § 25-2-14). 1980 Op. Att’y Gen. No. 80-102.

**Approval of plans generally.** — The approval of proposed building plans submitted pursuant to the Fire Safety Code is governed by O.C.G.A. § 25-2-14, not O.C.G.A. § 43-4-15, relating to architects. 1987 Op. Att’y Gen. No. 87-8.

The state fire marshal can approve any set of plans which come under the marshal’s

jurisdiction and which are under the classifications enumerated in O.C.G.A. § 25-2-14 regardless of what features the plans contain, if they have the seal of either an architect or an engineer or otherwise have the approval of the commissioner and are in compliance with other applicable codes. 1987 Op. Att’y Gen. No. 87-8.

**Approval of plans on jail.** — The state fire marshal may approve a set of plans on a jail, regardless of costs, square footage, or height of the building, if those plans bear the seal and Georgia registration number of the drafting engineer and are otherwise in compliance with the law. 1987 Op. Att’y Gen. No. 87-8.

**Board of regents** should continue to submit to state fire marshal only those plans and specifications for proposed buildings which come under the classifications set out in O.C.G.A. § 25-2-13. 1982 Op. Att’y Gen. No. 82-65.

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Buildings, § et seq.      **C.J.S.** — 53 C.J.S., Licenses, § 45 et seq.

**25-2-14.1. Buildings presenting special hazards to persons or property — Compliance of existing and proposed buildings and structures with minimum fire safety standards.**

(a) Every building and structure existing as of April 1, 1968, which building or structure is listed in paragraph (1) of subsection (b) of Code Section 25-2-13 shall comply with the minimum fire safety standards adopted in the rules and regulations promulgated pursuant to this chapter which were in effect at the time such building or structure was constructed, except that any nonconformance noted under the electrical standards adopted at the time such building or structure was constructed shall be corrected in accordance with the current electrical standards adopted pursuant to this chapter. A less restrictive provision contained in any subsequently adopted minimum fire safety standard may be applied to any existing building or structure.

(b) Every proposed building and structure listed in paragraph (1) of subsection (b) of Code Section 25-2-13 shall comply with the adopted minimum fire safety standards that were in effect on the date that plans and specifications therefor were received by the state fire marshal, the proper local fire marshal, or state inspector for review and approval. (Ga. L. 1981, p. 1779, § 8; Ga. L. 1989, p. 815, § 3.)

**25-2-15. Buildings presenting special hazards to persons or property — Issuance, etc., of temporary occupancy permits; time limits for compliance with chapter.**

In existing buildings which come under the classification in paragraph (1) of subsection (b) of Code Section 25-2-13, when substandard conditions are found, a temporary occupancy permit may be issued, such permit carrying a time limit adjusted to meet the amount of time deemed necessary to make the proper corrections in order to bring the building up to standard. All certificates of occupancy shall be issued against the building and shall not require renewal because of change of ownership. The same set of fees for certificates of occupancy as are applicable to proposed buildings covered in Code Section 25-2-14 shall apply. The Commissioner and his delegated authorities shall determine the time limit for complying with any of the standards established pursuant to this chapter. (Ga. L. 1949, p. 1057, § 10; Ga. L. 1999, p. 81, § 25.)

## RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Buildings,  
§ 26.

**25-2-16. Regulation of the storage, transportation, and handling of hazardous materials; use of hold-open latches at self-service gasoline stations; plans for bulk storage facilities.**

(a) Some substances constitute a special hazard to property and to the life and safety of persons because of certain characteristics and properties incident to their storage, handling, and transportation. Substances presenting such a special hazard include gasoline, kerosene, and other flammable liquids; liquefied petroleum gases; welding and other gases; dry-cleaning fluids; anhydrous ammonia; and other gases, liquids, or solids of a highly flammable or hazardous nature.

(b) Every person who stores, transports, or handles any of the hazardous substances listed in subsection (a) of this Code section shall so store, transport, and handle the substances as to afford every precaution and protection as may be found by the Commissioner to be reasonable and practical to avoid injury to persons from exposure, fire, or explosion caused by the storage, transportation, or handling of these substances, including transportation thereof only in vehicles which are in proper condition for that purpose.

(c) The Commissioner is directed to investigate the nature and properties of such hazardous substances and the known precautionary and protective techniques for their storage, transportation, and handling, including, but not limited to, the codes and standards adopted, recommended, or issued by the National Fire Protection Association and the Agricultural Nitrogen Institute. Based upon the investigation, the Commissioner is authorized to determine and by rule to provide what precautionary and protective techniques are reasonable and practical measures for the prevention of injury to persons and property from the storage, transportation, and handling of such highly flammable or hazardous substances. Such authorization shall include the power to provide, by rule, the minimum standards that a vehicle shall meet before it is considered to be in proper condition to transport the material. No person shall transport any such material or substance in bulk unless the vehicle in which it is transported is in the proper condition, as provided by such rules, to transport the material with reasonable safety.

(d)(1) As used in this subsection, the term:

(A) "Automatic-closing device" means a gasoline or diesel fuel pump nozzle which contains a valve which automatically shuts off the flow of gasoline or diesel fuel through the nozzle when the level of gasoline in a motor vehicle fuel tank reaches a certain level.



(B) "Hold-open latch" means a device which attaches to a gasoline or diesel fuel pump nozzle, which device mechanically holds the nozzle and valve in an open position.

(C) "Self-service station" means any place of business which sells gasoline or diesel fuel at retail and which allows customers to dispense the fuel.

(2) No self-service station shall be prohibited from installing and no customer at such station shall be prohibited from using hold-open latches on gasoline or diesel fuel pumps available for operation by the customer. However, if hold-open latches are used on pumps operated by the customer, such pumps shall be equipped with a functioning automatic-closing device.

(e) Plans and specifications for all proposed bulk storage facilities which come under classification in subsection (a) of this Code section shall be submitted to and receive approval by the state fire marshal and the proper local fire marshal before construction is started. All such plans and specifications submitted as required by this subsection shall be accompanied by a \$100.00 fee for screening and shall bear the seal and Georgia registration number of the drafting architect or engineer or shall otherwise have the approval of the Commissioner. (Ga. L. 1949, p. 1057, § 12; Ga. L. 1967, p. 619, § 3; Ga. L. 1968, p. 1084, § 1; Ga. L. 1983, p. 476, § 1; Ga. L. 1992, p. 2186, § 6.)

**Cross references.** — Hazardous waste management generally, § 12-8-60 et seq.

### JUDICIAL DECISIONS

**O.C.G.A. § 25-2-16(b).** — The provision of O.C.G.A. § 25-2-16(b) is not unreasonably vague. *Safety Fire Comm'r v. U.S.A. Gas, Inc.*, 229 Ga. App. 807, 494 S.E.2d 706 (1997).

### OPINIONS OF THE ATTORNEY GENERAL

**The scheme of this section (see O.C.G.A. § 25-2-16) is to protect the public** and it is contrary to public policy to allow the provisions of that section to be abrogated by agreement. 1970 Op. Att'y Gen. No. 70-147.

**Violation of regulation adopted by Safety**

**Fire Commissioner is a misdemeanor** and punishable accordingly, or may be corrected in conformity with Ga. L. 1949, p. 1057 (see O.C.G.A. §§ 25-2-23 through 25-2-25). 1970 Op. Att'y Gen. No. 70-147.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 31A Am. Jur. 2d, Explosives, § 125 et seq. 38 Am. Jur. 2d, Gas and Oil, §§ 171, 252. 57A Am. Jur. 2d, Negligence, §§ 312, 321 et seq. 58 Am. Jur. 2d, Nuisances, § 48 et seq.

**C.J.S.** — 65 C.J.S., Negligence, § 170 et

seq. 66 C.J.S., Nuisances, §§ 33, 42 et seq., 57, 62.

**ALR.** — Validity of regulations as to manner of handling or distributing gasoline, 58 ALR 860.

Validity of regulations as to keeping or

storage of gasoline, 128 ALR 364.

Liability in connection with fire or explosion of explosives while being stored or transported, 35 ALR3d 1177.

Gasoline or other fuel storage tanks as nuisance, 50 ALR3d 209.

## 25-2-17. Regulation of explosives.

(a) As used in this Code section, the term “explosive” or “explosives” means any chemical compound or mechanical mixture which is commonly used or intended for the purpose of producing an explosion, which compound or mixture contains any oxidizing and combustible units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb. Explosives constitute a special hazard to life and safety of persons because of the danger incident to their manufacture, transportation, use, sale, and storage.

(b) Every person who manufactures, transports, uses, sells, or stores explosives shall so manufacture, transport, use, sell, and store them as to afford every precaution and protection against injury to persons as the Commissioner may determine and by rule declare to be reasonable and practical; provided, however, that nothing contained in this Code section shall be construed to extend to storage, use, or sale of small arms ammunition.

(c) The Commissioner is directed to investigate and examine the nature and properties of various explosives and known safety and protective techniques, including the safety standards, recommendations, and codes of the National Fire Protection Association (Explosives Ordinance, National Fire Code), and the American Insurance Association, the successor to the National Board of Fire Underwriters. Based upon the investigation, the Commissioner is authorized to determine and by rule to provide what reasonable and practical protection must be afforded persons with respect to the manufacture, transportation, use, sale, and storage of explosives.

(d) No person shall manufacture, transport, use, sell, or store explosives without having first obtained a license therefor issued by the Commissioner in accordance with reasonable rules established by him. The Commissioner is authorized to make reasonable rules providing for the issuance of such licenses on an annual basis to those applicants who have observed and may be expected to observe safety rules lawfully made under this Code section. Graded fees for such licenses shall be as provided in Code Section 25-2-4.1. The permits for the use only of explosives may be issued by judges of the

probate courts or other local elected officials whom the Commissioner may designate. Fees for such permits to use explosives shall be \$2.00 for each permit issued, which fee shall be retained by the issuing local official.

(e) Every person licensed under this Code section who suffers a larceny or attempted larceny of primer cord, blasting agents, powders, and dynamite shall make a report thereof to local law enforcement agencies and to the state fire marshal, in accordance with rules made by the Commissioner. The Commissioner is authorized to make such rules. (Ga. L. 1949, p. 1057, § 13; Ga. L. 1967, p. 619, § 4; Ga. L. 1992, p. 2186, § 7; Ga. L. 1992, p. 2725, § 6.)

**Cross references.** — Regulation of fireworks, Ch. 10, T. 25.

### JUDICIAL DECISIONS

**Editor's notes.** — Some of the cases cited below were decided under former Civil Code 1910, §§ 1655, 2745, 2746.

**Storing powder not nuisance per se.** — The act of a powder company in maintaining

and storing powder upon one's land is not a nuisance per se. *Simpson v. DuPont Powder Co.*, 143 Ga. 465, 85 S.E. 344, 1915E L.R.A. 430 (1915) (decided under former Civil Code 1910, §§ 1655, 2745, 2746).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 31A Am. Jur. 2d, Explosions and Explosives, § 9 et seq. 51 Am. Jur. 2d, Licenses and Permits, §§ 9, 71 et seq., 80 et seq.

**C.J.S.** — 35 C.J.S., Explosives, §§ 2, 3, 53 C.J.S., Licenses, §§ 2, 5, 7, 39 et seq.

**ALR.** — Liability for damages by explosives transported along highway, 44 ALR 124.

Validity of regulations as to manner of

handling or distributing gasoline, 58 ALR 860.

Validity of regulations as to keeping or storage of gasoline, 128 ALR 364.

Coverage of clause of fire policy insuring against explosion, 28 ALR2d 995.

Liability in connection with fire or explosion of explosives while being stored or transported, 35 ALR3d 1177.

### 25-2-18. Exemption of public buildings from fees or licenses; waiver for churches and charities.

All federal, state, county, or city publicly owned buildings covered by this chapter are exempt from any fee or license which may be specified in this chapter. Such fees or licenses may be waived where chargeable to churches and charitable organizations. (Ga. L. 1949, p. 1057, § 31.)

### 25-2-19. Regulation of fire hazards in hotels, apartment houses, department stores, warehouses, and public places.

The Commissioner shall promulgate reasonable rules and regulations governing and regulating fire hazards in hotels, apartment houses, department stores, warehouses, storage places, and places of public assembly. (Ga. L. 1949, p. 1057, § 17.)



**Cross references.** — Operators of Hotels, Inns, and Roadhouses generally, Ch. 21, T. 43.

### OPINIONS OF THE ATTORNEY GENERAL

**Safety Fire Commissioner has authority to adopt rules and regulations which pertain to safety and protection of public at race tracks** so long as there is a relationship between the

rules and regulations adopted and the duties and responsibilities entrusted to the Commissioner under the Safety Fire Commissioner Act. 1969 Op. Att'y Gen. No. 69-355.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Buildings, §§ 23, 24. 35A Am. Jur. 2d, Fires, § 1.

**ALR.** — Liability of one starting bonfire for burning of child, 36 ALR 297.

Power to require closing of place of amusement or other place of public assembly because of fire hazard or unsanitary conditions, 140 ALR 1048.

## 25-2-20. Licensing of traveling carnivals, circuses, and other exhibits.

All traveling motion picture shows, carnivals, and circuses shall obtain a fire prevention regulatory license from the state fire marshal based upon compliance with this chapter, as set forth in rules and regulations promulgated by the Commissioner. The fee for the license shall be \$100.00 for each calendar year or part thereof, payable to the state fire marshal, who shall pay the same into the state treasury. (Ga. L. 1949, p. 1057, § 18.)

**Cross references.** — Regulation of activities of carnivals, road shows, tent shows, and other itinerant entertainment, see § 43-1-15.

### OPINIONS OF THE ATTORNEY GENERAL

**Carnival or circus must obtain fire prevention license**, and said license is not required to be procured only where the licensee

comprises a number or collection of such shows, riding devices, booths, or concessions. 1952-53 Op. Att'y Gen. p. 378.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 27A Am. Jur. 2d, Entertainment and Sports Law, §§ 4 et seq., 47 et seq.

**C.J.S.** — 30A C.J.S., Entertainment and Amusement; Sports, § 18 et seq.

## 25-2-21. Investigation on complaint of dangerous building appurtenances; effect of failure to remove or repair after notice.

Repealed by Ga. L. 1981, p. 1779, § 9, effective April 1, 1982.

**25-2-22. Right of Commissioner and other authorized officials to enter and inspect buildings and premises.**

(a) The Commissioner and the various officials delegated by him to carry out this chapter shall have the authority at all times of the day and night to enter in or upon and to examine any building or premises where a fire is in progress or has occurred, as well as other buildings or premises adjacent to or near the same. The Commissioner and his delegated authorities shall have the right to enter in and upon all buildings and premises subject to this chapter, at any reasonable time, for the purpose of examination or inspection.

(b) Upon complaint submitted in writing, the Commissioner and the various officials to whom enforcement authority is delegated under this chapter may enter in or upon any building or premises between the hours of sunrise and sunset for the purpose of investigating the complaint. Upon the complaint of any person, the state fire marshal or his deputized officials may inspect or cause to be inspected all buildings and premises within their jurisdiction whenever he or they deem it necessary. (Ga. L. 1949, p. 1057, § 20.)

**OPINIONS OF THE ATTORNEY GENERAL**

**Construction of O.C.G.A. § 25-2-22.** — In construing the words “a complaint submitted in writing” with Ga. L. 1949, p. 1051, § 20 (see O.C.G.A. § 25-2-22, in which they are contained, in its entirety and with the other sections (see O.C.G.A. Title 25, Chapter 2), it appears clear that the complaint would have to allege a violation of one of those sections. 1963-65 Op. Att’y Gen. p. 349.

**Authority of Commissioner to enter building.** — Upon written complaint to the Commissioner, that a building is in violation of O.C.G.A. Title 25, Chapter 2, or of the rules of the Commissioner, the Commissioner has authority to enter the building between sunrise and sunset to investigate the complaint, pursuant to O.C.G.A. § 25-2-22. 1990 Op. Att’y Gen. No. 90-4.

**Commissioner has no duty to inspect certain abandoned buildings.** — An abandoned building, which is three stories or less in

height, which does not otherwise fall within the list of buildings in O.C.G.A. § 25-2-13 is not subject to inspection and licensing under O.C.G.A. § 25-2-12. The Commissioner therefore has no duty to inspect such a building. 1990 Op. Att’y Gen. No. 90-4.

**The authority of the Commissioner to investigate potential fire hazards upon written complaint** under O.C.G.A. § 25-2-22(b) is not limited to the buildings and premises listed in O.C.G.A. § 25-2-13, nor otherwise limited as to type of building or premises. 1990 Op. Att’y Gen. 90-4.

**In order for a written complaint to provide a proper basis for an investigation** by the Commissioner, the complaint should allege the existence of some fire hazard, and also must allege a violation of the rules and standards which have been established pursuant to the Commissioner’s rule-making authority. 1990 Op. Att’y Gen. No. 90-4.

**RESEARCH REFERENCES**

**C.J.S.** — 73A C.J.S., Public Administrative Law and Procedure, § 272 et seq.

**ALR.** — Power to require closing of place

of amusement or other place of public assembly because of fire hazard or unsanitary conditions, 140 ALR 1048.

Liability of owner or occupant of premises to building or construction inspector coming upon premises in discharge of duty, 28 ALR3d 891.

Municipal liability for negligent fire inspection and subsequent enforcement, 69 ALR4th 739.

### **25-2-22.1. Inspection warrants.**

(a) The Commissioner, his delegate, or any other person authorized under this title to conduct inspections of property, in addition to other procedures now or hereafter provided, may obtain an inspection warrant under the conditions specified in this Code section. Such warrant shall authorize the Commissioner or his delegate or such authorized person to conduct a search or inspection of property either with or without the consent of the person whose property is to be searched or inspected if such search or inspection is one that is elsewhere authorized under this title or the rules and regulations duly promulgated hereunder.

(b) Inspection warrants may be issued by any judge of the superior, state, municipal, or magistrate court upon proper oath or affirmation showing probable cause for the purpose of conducting inspections authorized by this title or rules promulgated under this title and for the seizure of property or the taking of samples appropriate to the inspection. For the purposes of issuance of inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this title or rules promulgated under this title sufficient to justify inspection of the area, premise, building, or conveyance in the circumstances specified in the application for the warrant.

(c) A warrant shall be issued only upon affidavit of the Commissioner or his designee or any person authorized to conduct inspections pursuant to this title, sworn to before the judicial officer and establishing the grounds for issuing the warrant. The issuing judge may issue the warrant when he is satisfied that the following conditions are met:

(1) The one seeking the warrant must establish under oath or affirmation that the property to be inspected is to be inspected as a part of a legally authorized program of inspection which includes that property or that there is probable cause for believing that there is a condition, object, activity, or circumstance which legally justifies such an inspection of that property; and

(2) The issuing judge determines that the issuance of the warrant is authorized by this Code section.

(d) The warrant shall:

(1) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(2) Be directed to persons authorized by this title to conduct inspections to execute it;



(3) Command the persons to whom it is directed to inspect the area, premise, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

(4) Identify the item or types of property to be seized, if any; and

(5) Designate the judicial officer to whom it shall be returned.

(e) A warrant issued pursuant to this Code section must be executed and returned within ten days of its date of issuance unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be provided upon request to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. A copy of the inventory shall be delivered upon request to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(f) The judicial officer who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the superior court for the county in which the inspection was made. (Code 1981, § 25-2-22.1, enacted by Ga. L. 1989, p. 815, § 1.)

### **25-2-23. Issuance of notice to correct unsafe conditions.**

When any of the officers listed in Code Section 25-2-22 finds any building or other structure which, for want of repair or by reason of age or dilapidated condition or any other cause is especially liable to fire hazard or which is so situated as to endanger other property or the safety of the public, or when, in or around any building, such officer finds combustible or explosive matter, inflammables, or other conditions dangerous to the safety of the building, notice may be given to the owner or agent and occupant of the building to correct such unsafe conditions as may be found. (Ga. L. 1949, p. 1057, § 20.)

### **OPINIONS OF THE ATTORNEY GENERAL**

<p><b>Violation of regulations adopted by Safety Fire Commissioner is misdemeanor and punishable accordingly, or may be corrected</b></p>	<p>in conformity with Ga. L. 1949, p. 1057, § 20 (see O.C.G.A. §§ 25-2-23 through 25-2-25). 1970 Op. Att'y Gen. No. 70-147.</p>
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### **RESEARCH REFERENCES**

<p><b>Am. Jur. 2d.</b> — 2 Am. Jur. 2d, Administrative Law, § 381. 13 Am. Jur. 2d, Buildings, §§ 34 et seq., 46. 58 Am. Jur. 2d, Nuisances, §§ 226 et seq., 321 et seq., 398 et seq.</p>	<p><b>C.J.S.</b> — 66 C.J.S., Nuisances, § 71. 73A C.J.S., Public Administrative Law and Procedure, § 272 et seq.</p> <p><b>ALR.</b> — Power to require closing of place</p>
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of amusement or other place of public assembly because of fire hazard or unsanitary conditions, 140 ALR 1048.

**25-2-24. Filing of petition for court order compelling compliance with notice.**

If any owner, agent, or occupant fails to comply with the notice prescribed in Code Section 25-2-23 within the time specified in the notice, the state fire marshal or his delegated officials, with the approval of the Commissioner, may petition the court for a rule nisi to show cause why an order should not be issued by the court that the same be removed or remedied. Such court order shall forthwith be complied with by the owner or occupant of the premises or building within such time as may be fixed in the court order. (Ga. L. 1949, p. 1057, § 20.)

**OPINIONS OF THE ATTORNEY GENERAL**

**Purchase of junior fire marshal badges by state.** — State may purchase junior fire marshal badges for Comptroller General (now Commissioner of Insurance) as promotion of fire prevention. 1962 Op. Att'y Gen. p. 444.

**Use of state funds for purchase of fire safety messages.** — For examples of messages containing fire safety message but also containing element of gratuity which out-

weighs educational value of message, thereby prohibiting state funds being used therefor, see 1962 Op. Att'y Gen. p. 445.

**Violation of regulations adopted by Safety Fire Commissioner is misdemeanor** and punishable accordingly, or may be corrected in conformity with Ga. L. 1949, p. 1057, § 20 (see O.C.G.A. §§ 25-2-23 through 25-2-25). 1970 Op. Att'y Gen. No. 70-147.

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 2 Am. Jur. 2d, Administrative Law, § 381. 13 Am. Jur. 2d, Buildings, § 39. 42 Am. Jur. 2d, Injunctions, §§ 5, 148.

**C.J.S.** — 73A C.J.S., Public Administrative Law and Procedure, § 272 et seq.

**ALR.** — Power to require closing of place of amusement or other place of public assembly because of fire hazard or unsanitary conditions, 140 ALR 1048.

**25-2-25. Remedy of unsafe conditions by city or county upon failure to comply with court order; liability for expenses generally; issuance of fi. fa. against owner of property for expense incurred.**

If any person fails to comply with the order of the court made pursuant to Code Section 25-2-24 within the time fixed, the city or county in which the building or premises in question are located shall cause the building or premises to be forthwith repaired, torn down, or demolished, the hazardous materials removed, or the dangerous conditions remedied, as the case may be, at the expense of the city or county in which the property is situated. If the owner thereof, within 30 days after notice in writing of the amount of such expense, fails, neglects, or refuses to repay the city or county the expense thereby incurred, the local authorities shall issue a fi. fa.



against the owner of the property for the expense actually incurred. (Ga. L. 1949, p. 1057, § 20.)

OPINIONS OF THE ATTORNEY GENERAL

**Violation of regulations adopted by Safety Fire Commissioner is misdemeanor and punishable accordingly, or may be corrected** in conformity with Ga. L. 1949, p. 1057, § 20 (see O.C.G.A. §§ 25-2-23 through 25-2-25). 1970 Op. Att’y Gen. No. 70-147.

RESEARCH REFERENCES

**Am. Jur. 2d.** — 2 Am. Jur. 2d, Administrative Law, § 381. 13 Am. Jur. 2d, Buildings, § 46 et seq. 42 Am. Jur. 2d, Injunction, § 5.  
**C.J.S.** — 66 C.J.S., Nuisances, §§ 131 et seq., 158. 73A C.J.S., Public Administrative Law and Procedure, § 272 et seq.  
**ALR.** — Power to require closing of place of amusement or other place of public assembly because of fire hazard or unsanitary conditions, 140 ALR 1048.

**25-2-26. Final authority for ordering enforcement of Code Sections 25-2-22 through 25-2-25.**

Code Sections 25-2-22 through 25-2-25 shall be construed so that the final authority for ordering the carrying out and enforcement of such Code sections shall be by order of the court and not by the Commissioner or his delegated authority. (Ga. L. 1949, p. 1057, § 20.)

RESEARCH REFERENCES

**C.J.S.** — 73A C.J.S., Public Administrative Law and Procedure, § 272 et seq.

**25-2-27. Procedure for investigation of suspected arson — Taking of testimony; arrest of suspect; furnishing of information to district attorney.**

The state fire marshal or his deputy, when in his opinion such proceedings are necessary, shall take the testimony on oath of all persons believed to be cognizant of or to have information or knowledge in relation to suspected arson and shall cause the testimony to be reduced to writing. If he is of the opinion that there is evidence sufficient to charge any person with the crime of arson, he shall cause such person to be arrested in accordance with the law. He shall also furnish the district attorney of the circuit in which the fire occurred with all the information obtained by him in his investigation. The district attorney shall thereupon proceed according to law. (Ga. L. 1949, p. 1057, § 21.)

**Cross references.** — Arson and explosives generally, § 16-7-60 et seq.

### OPINIONS OF THE ATTORNEY GENERAL

**Powers not exclusive.** — The grant to the state fire marshal and the marshal's deputy of powers relating to investigation of sus-

pected arson, as set forth in O.C.G.A. § 25-2-27, is not exclusive. 1989 Op. Att'y Gen. No 89-14.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 5 Am. Jur. 2d, Arrest, §§ 1 et seq., 10 et seq. 38, 47. 5 Am. Jur. 2d, Arson and Related Offenses, § 31 et seq.

**C.J.S.** — 6A C.J.S., Arrest, §§ 5-11, 16, 17. 6A C.J.S., Arson, §§ 23-52.

**ALR.** — Expert and opinion evidence as regards fire, 131 ALR 1113.

What constitutes "burning" to justify charge of arson, 28 ALR4th 482.

### 25-2-28. Procedure for investigation of suspected arson — Issuance of subpoenas to compel attendance of witnesses or production of documents; administration of oaths; issuance of court order compelling compliance.

(a) The state fire marshal or the deputy state fire marshal shall have the power to summon and compel the attendance of witnesses before either or both of them, in any county in which the witness resides, to testify in relation to any matter which is designated by Code Section 25-2-27 as a subject of inquiry and to issue subpoenas to compel the production of all books, records, documents, and papers pertaining to such subject of inquiry. The state fire marshal and deputy state fire marshal may also administer oaths and affirmations to persons appearing as witnesses before them. Any person summoned shall have the right of counsel at the hearing if he desires.

(b) Should any person fail to comply with this Code section, the state fire marshal or his agent is authorized to procure an order from the superior court of the county in which the proposed witness resides, requiring compliance under the law. (Ga. L. 1949, p. 1057, § 22.)

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 2 Am. Jur. 2d, Administrative Law, §§ 131 et seq., 388. 35A Am. Jur. 2d, Fires, § 5.

**C.J.S.** — 36A C.J.S., Fires, §§ 17, 18. 73A

C.J.S., Public Administrative Law and Procedure, §§ 124, 131 et seq.

**ALR.** — Expert and opinion evidence as regards fire, 131 ALR 1113.

### 25-2-29. Hearing procedure.

All hearings held by or under the direction of the Commissioner shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the Commissioner may also satisfy the procedure for conduct of hearings on contested cases and rule making required under said chapter by following and complying with Chapter 2 of Title 33. (Ga. L. 1949, p. 1057, § 23; Ga. L. 1992, p. 2186, § 8.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 2 Am. Jur. 2d, Administrative Law, § 127 et seq. 35A Am. Jur. 2d, Fires, § 5.

**C.J.S.** — 36A C.J.S., Fires, §§ 17, 18. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq.

**25-2-30. Duty of state fire marshal as to promotion of fire prevention and life safety generally.**

It shall be the duty of the state fire marshal to contact individuals, associations, and state agencies, both within and outside this state, which have a direct interest in the fundamentals of fire prevention and life safety, for the purpose of promoting the objectives of this chapter. (Ga. L. 1949, p. 1057, § 28.)

## OPINIONS OF THE ATTORNEY GENERAL

**Purchase of junior fire marshal badges by state.** — State may purchase junior fire marshal badges for Comptroller General (now Commissioner of Insurance) as promotion of fire prevention. 1962 Op. Att'y Gen. p. 444.

**Use of state funds for purchase of fire safety messages.** — See 1962 Op. Att'y Gen. p. 445.

**25-2-31. Dissemination of fire prevention information by state fire marshal generally; fire prevention programs in schools; cooperation with state fire marshal by local authorities.**

(a) The state fire marshal may promote any plan or program which tends to disseminate information on fire prevention and similar projects and may aid any association or group of individuals which is primarily organized along such lines.

(b) It shall be the duty of the state fire marshal to carry on a state-wide program of fire prevention education in the schools of this state and to establish fire drills therein. All local school authorities are required to cooperate with the state fire marshal in carrying out programs designed to protect the lives of school children from fire and related hazards. (Ga. L. 1949, p. 1057, § 26.)

## OPINIONS OF THE ATTORNEY GENERAL

**Expenditure involving expenses for conducting Junior Fire Marshal Camp is not an illegal expenditure,** it being a constitutional and authorized educational expense autho-

rized by Ga. L. 1949, p. 1057, § 26 (see O.C.G.A. § 25-2-31). 1963-65 Op. Att'y Gen. p. 446.



**25-2-32. Maintenance of records of fire losses; reports of losses by insurance companies; reports of fires.**

(a) It shall be the duty of the state fire marshal to keep an up-to-date record of all fire losses, together with statistical data concerning the same. The various fire insurance companies doing business in this state shall submit to the Commissioner, quarterly, a report stating all the losses sustained by them, together with such pertinent data as may be required by the Commissioner.

(b) Effective January 1, 1993, all incidents of fires, whether accidental or incendiary, shall be reported to the office of the Safety Fire Commissioner. Every fire department shall submit incident data either via a uniform electronic reporting method or on a uniform reporting form prescribed by the Commissioner and at intervals established by the Commissioner. (Ga. L. 1949, p. 1057, § 25; Ga. L. 1992, p. 2186, § 9.)

**Cross references.** — Property insurance generally, Ch. 32, T. 33.

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 43 Am. Jur. 2d, Insurance, § 62.      **C.J.S.** — 43 C.J.S., Insurance, § 56.

**25-2-32.1. Reports to Safety Fire Division of serious burn injuries.**

Every case of a burn injury or wound where the victim sustained second-degree or third-degree burns to 5 percent or more of the body or any burns to the upper respiratory tract or laryngeal edema due to the inhalation of superheated air, and every case of a burn injury or wound which is likely to or may result in death, shall be reported at once to the Safety Fire Division of the office of the Commissioner of Insurance. The Safety Fire Division shall accept the report and notify the proper investigatory agency as may be appropriate. A written report shall be provided to the Safety Fire Division within 72 hours. The report shall be made by the physician attending or treating the case or by the manager, superintendent, or other person in charge whenever such case is treated in a hospital sanitarium, institution, or other medical facility. (Code 1981, § 25-2-32.1, enacted by Ga. L. 1992, p. 2186, § 10.)

**25-2-32.2. Investigation of burn injuries reported pursuant to Code Section 25-2-32.1.**

Every county or municipal governing authority or any two or more governing authorities or the Safety Fire Division are authorized and empowered to take such action as may be required to formulate task forces, teams, or fire or police investigative units to investigate any case of a burn

injury or wound sustained as reported pursuant to Code Section 25-2-32.1, to ascertain the cause of fires or explosions of suspicious origin within the county or municipalities, to pursue necessary investigation thereof, and to assist in the preparation and prosecution of cases stemming from any alleged criminal activity attendant to such fires or explosions. (Code 1981, § 25-2-32.2, enacted by Ga. L. 1992, p. 2186, § 10.)

**25-2-33. Release of fire loss information by insurers on request by state official; immunity for furnishing of information; confidentiality of information received; testimony by officials in action against insurer.**

(a) The state fire marshal, any deputy designated by the state fire marshal, the director of investigation of the Georgia Bureau of Investigation or the chief of a fire department of any municipal corporation or county where a fire department is established may request any insurance company investigating a fire loss of real or personal property to release any information in its possession relative to that loss. The company shall release the information to and cooperate with any official authorized to request such information pursuant to this Code section. The information to be released shall include, but is not limited to:

(1) Any insurance policy relevant to the fire loss under investigation and any application for such a policy;

(2) Policy premium payment records on the policy, to the extent available;

(3) Any history of previous claims made by the insured for fire loss with the reporting carrier; and

(4) Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other relevant evidence.

(b) If an insurance company has reason to suspect that a fire loss to its insured's real or personal property was caused by incendiary means, the company shall notify the state fire marshal and furnish him with all relevant material acquired by the company during its investigation of the fire loss. The insurer shall also cooperate with and take such action as may be requested of it by the state fire marshal's office or by any law enforcement agency of competent jurisdiction. The company shall also permit any person to inspect its records pertaining to the policy and to the loss if the person is authorized to do so by law or by an appropriate order of a superior court of competent jurisdiction.

(c) In the absence of fraud or malice, no insurance company or person who furnishes information on its behalf shall be liable for damages in a civil action or subject to criminal prosecution for any oral or written statement



made or any other action taken which is necessary to supply information required pursuant to this Code section.

(d) The officials and departmental and agency personnel receiving any information furnished pursuant to this Code section shall hold the information in confidence until such time as its release is required pursuant to a criminal or civil proceeding, provided that nothing contained in this Code section shall be deemed to prohibit representatives of the state fire marshal's office or other authorized law enforcement officials from discussing such matters with other agency or departmental personnel or with other law enforcement officials or from releasing or disclosing any such information during the conduct of their investigation, if the release or disclosure is necessary to enable them to conduct their investigation in an orderly and efficient manner; provided, further, that nothing contained in this Code section shall prohibit an insurance company which furnishes information to an authorized agency or agencies pursuant to this Code section from having the right to request relevant information and receive, within a reasonable time not to exceed 30 days, the information requested.

(e) Any official referred to in subsection (a) of this Code section may be required to testify as to any information in his possession regarding the fire loss of real or personal property in any civil action against an insurance company for the fire loss in which any person seeks recovery under a policy.

(f)(1) No person shall purposely refuse to release any information requested pursuant to subsection (a) of this Code section.

(2) No person shall purposely refuse to notify the state fire marshal of a fire loss required to be reported pursuant to subsection (b) of this Code section.

(3) No person shall purposely refuse to supply the state fire marshal with pertinent information required to be furnished pursuant to subsection (b) of this Code section.

(4) No person shall purposely fail to hold in confidence information required to be held in confidence by subsection (d) of this Code section.

(g) Any person willfully violating this Code section shall be guilty of a misdemeanor. (Ga. L. 1977, p. 1232, § 1; Ga. L. 1981, p. 825, § 1; Ga. L. 1982, p. 3, § 25.)

**Cross references.** — Property insurance generally, Ch. 32, T. 33.

#### OPINIONS OF THE ATTORNEY GENERAL

**Restriction on persons entitled to request information.** — In cases where the insurance company does not have reason to suspect incendiary causes, only those persons design-

nated in O.C.G.A. § 25-2-33(a) may request release of fire loss information from an insurance company. 1989 Op. Att'y Gen. No 89-14.

**Requests from law enforcement agencies.**

— Any law enforcement agency of competent jurisdiction may request an insurance company to release fire loss information in cases where the insurance company has reason to suspect that the fire loss was caused by incendiary means. 1989 Op. Att’y Gen. No 89-14.

**Scope of directive to cooperative with law enforcement agencies.** — O.C.G.A.

§ 25-2-33(b) directive to insurance companies to cooperate with any law enforcement agency of competent jurisdiction includes such persons as sheriffs, county police, and other peace officers of proper jurisdiction. 1989 Op. Att’y Gen. No 89-14.

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 1 Am. Jur. 2d, Abstracts of Title, § 9 et seq. 18 Am. Jur. 2d, Corporations, §§ 348 et seq., 400 et seq. 66 Am. Jur.

2d, Records and Recording Laws, §§ 21, 24.

**C.J.S.** — 46A C.J.S., Insurance, § 1285.

**25-2-33.1. Reports of arson and suspected arson to state fire marshal and insurers; notification of payment of claim as to which report filed.**

(a) The fire department of each county and municipality and any other organized fire department operating within this state shall report every incident or suspected incident of arson to the local law enforcement agency, the state fire marshal, and every insurance company with a known pecuniary interest in the cause of the fire in which arson is involved or suspected to be involved. In any local jurisdiction where an organized fire department is not operating, the local law enforcement agency investigating a fire shall make the reports required by this Code section. Such reports shall be made on forms provided for that purpose by the state fire marshal.

(b) Any insurance company which has received a report of an incident or suspected incident of arson under subsection (a) of this Code section shall not pay any claim relating thereto prior to notifying in writing the state fire marshal and local fire department of the date the claim is to be paid. (Code 1981, § 25-2-33.1, enacted by Ga. L. 1982, p. 792, § 1.)

**25-2-34. Cooperation with Commissioner, deputies and inspectors by Department of Public Safety and Georgia State Patrol.**

The Department of Public Safety, the Georgia State Patrol, and the Georgia Bureau of Investigation shall cooperate with the Commissioner and his deputies and inspectors whenever called upon by him or them in enforcing this chapter. They shall make available to the Commissioner or his deputies and inspectors such facilities as lie detectors, broadcasting facilities, and other aid and devices as requested. (Ga. L. 1949, p. 1057, § 24.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 2 Am. Jur. 2d, Administrative Law, § 135.

**C.J.S.** — 73 C.J.S., Public Administrative Law and Procedures, § 76.

**25-2-35. Payment of sheriffs and other peace officers for assistance in determining causes of fires, etc.**

The Commissioner is authorized to pay sheriffs and other peace officers reasonable fees for assistance given in assembling evidence as to the causes or criminal origin of fires and in apprehending persons guilty of arson. (Ga. L. 1949, p. 1057, § 24.)

**Cross references.** — Arson and explosives, § 16-7-60 et seq.

**25-2-36. Remedies for violations of provisions of chapter and rules, regulations, or orders of Commissioner — Injunctive relief.**

In addition to the civil monetary penalty provided for in Code Section 25-2-37, the Commissioner may bring a civil action to enjoin a violation of any provision of this chapter or any rule, regulation, or order issued by the Commissioner under this chapter. In particular, but not by way of limitation upon the authority granted in this Code section, the Commissioner may bring an action to enjoin any construction found to be in contravention of Code Section 25-2-13 or 25-2-14 or to obtain an order of court directing the immediate evacuation and the secure closure of any structure which, by reason of violation of any provision of this chapter or of any rule, regulation, or order issued by the Commissioner under this chapter, is found to pose an immediate threat to the property, health, or lives of the occupants of the structure. In order to avail himself of the remedies provided for in this Code section, it shall not be necessary for the Commissioner to allege or to prove the absence of an adequate remedy at law. (Ga. L. 1972, p. 894, § 2.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 36 Am. Jur. 2d, Forfeitures and Penalties, § 52 et seq. 73 Am. Jur. 2d, Statutes, § 194 et seq.

**C.J.S.** — 70 C.J.S., Penalties, § 1 et seq.

**25-2-37. Locking exit doors; construction of building without approval of plans; civil penalties for violation of chapter or rules.**

(a) It shall be unlawful for any person to lock an exit door whether or not it is a required exit unless such provisions are allowed by this chapter or by any rule, regulation, or order issued by the Commissioner under this chapter.



(b) It shall be unlawful for any person to begin construction on any proposed building or structure which comes under the classification in paragraph (1) of subsection (b) of Code Section 25-2-13 and which comes under the jurisdiction of the office of the Commissioner of Insurance pursuant to Code Section 25-2-12 without first having plans approved in accordance with Code Section 25-2-14.

(c) Any person who violates this chapter or any rule, regulation, or order issued by the Commissioner under this chapter shall be subject to a civil penalty imposed by the Commissioner in accordance with the rules and regulations promulgated by the Commissioner.

(d) Any person who violates this chapter or any rule, regulation, or order issued by the Commissioner under this chapter shall be subject to a civil penalty not to exceed \$1,000.00 for each day that the violation persists after such person is notified of the Commissioner's intent to impose such penalty and of the right to a hearing with respect to same.

(e) Any person violating subsection (a), (b), or (c) of this Code section shall be subject to a fine of not more than \$1,000.00 for a first offense, not less than \$1,000.00 and not more than \$2,000.00 for a second offense, and not less than \$2,000.00 and not more than \$5,000.00 for a third or subsequent offense. (Ga. L. 1972, p. 894, § 2; Ga. L. 1992, p. 2186, § 11.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 36 Am. Jur. 2d, Forfeitures and Penalties, § 52 et seq. 73 Am. Jur. 2d, Statutes, § 194 et seq.

**C.J.S.** — 70 C.J.S., Penalties, § 1 et seq.

**ALR.** — Recovery of cumulative statutory penalties, 71 ALR2d 986.

#### **25-2-38. Remedies for violations of provisions of chapter and rules, regulations, or orders of Commissioner — Criminal penalty.**

Any person, firm, or corporation violating this chapter or failing or refusing to comply with any regulation promulgated under this chapter shall be guilty of a misdemeanor. (Ga. L. 1949, p. 1057, § 32.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Violation of regulations adopted by Safety Fire Commissioner is misdemeanor and punishable accordingly, or may be corrected**

in conformity with Ga. L. 1949, p. 1057, § 20 (see O.C.G.A. §§ 25-2-23 through 25-2-25). 1970 Op. Att'y Gen. No. 70-147.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 36 Am. Jur. 2d, Forfeitures and Penalties, § 52 et seq. 73 Am. Jur. 2d, Statutes, § 194 et seq.

**C.J.S.** — 70 C.J.S., Penalties, § 1 et seq.



**25-2-38.1. Sovereign immunity; effect of this chapter on legal duties of property owners and lessees.**

(a) Nothing in this chapter shall be construed to constitute a waiver of the sovereign immunity of the state, or any officer or employee thereof, in carrying out the provisions of this chapter. No action shall be maintained against the state, any municipality, county, or any officer, elected officer or employees thereof, for damages sustained as a result of any fire or related hazard covered in this chapter by reason of any inspection or other action taken or not taken pursuant to this chapter.

(b) Nothing in this chapter shall be construed to relieve any property owner or lessee thereof from any legal duty, obligation, or liability incident to the ownership, maintenance, or use of such property. (Ga. L. 1981, p. 1779, § 9.)

**Cross references.** — Nonliability of counties in absence of statute, § 36-1-4. Liability of municipal corporations for acts or omissions of officers, Ch. 33, T. 36. Immunity of state and political subdivisions for emergency management activities, § 38-3-35. Immunity of officers, members, etc., of county, municipal, etc., fire departments from liability for acts performed while fighting fires or for acts performed at scenes of emergency, §§ 51-1-29, 51-1-30.

**RESEARCH REFERENCES**

**ALR.** — Municipal liability for negligent fire inspection and subsequent enforcement, 69 ALR4th 739.

**25-2-39. Construction of chapter.**

It is declared that this chapter is necessary for the public safety, health, peace, and welfare, is remedial in nature, and shall be construed liberally. (Ga. L. 1949, p. 1057, § 30.)

**JUDICIAL DECISIONS**

**Cited in** Bishop v. Act-O-Lane Gas Serv. Co., 91 Ga. App. 154, 85 S.E.2d 169 (1954).

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 73 Am. Jur. 2d, Statutes, §§ 8, 60 et seq., 179 et seq. **C.J.S.** — 82 C.J.S., Statutes, § 306 et seq.

**25-2-40. Smoke detectors required in new dwellings and dwelling units; exceptions.**

(a)(1) Except as otherwise provided in subsection (f) of this Code section, on and after July 1, 1987, every new dwelling and every new

dwelling unit within an apartment, house, condominium, and townhouse and every motel, hotel, and dormitory shall be provided with an approved listed smoke detector installed in accordance with the manufacturer's recommendations and listing.

(2) On and after July 1, 1994, every dwelling and every dwelling unit within an apartment, house, condominium, and townhouse and every motel, hotel, and dormitory which was constructed prior to July 1, 1987, shall have installed an approved battery operated smoke detector which shall be maintained in good working order unless any such building is otherwise required to have a smoke detector system pursuant to Code Section 25-2-13.

(3) On and after July 1, 2001, every patient sleeping room of every nursing home shall be provided with no less than an approved listed battery operated single station smoke detector installed in accordance with their listing. Such detectors shall be maintained in good working order by the operator of such nursing home. This paragraph shall not apply to nursing homes equipped with automatic sprinkler systems.

(b) In dwellings, dwelling units, and other facilities listed in subsection (a) of this Code section, a smoke detector shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to each group of rooms used for sleeping purposes. Where the dwelling or dwelling unit contains more than one story, detectors are required on each story including cellars and basements, but not including uninhabitable attics; provided, however, that hotels and motels which are protected throughout by an approved supervised automatic sprinkler system installed in accordance with the rules and regulations of the Commissioner shall be exempt from the requirement to install smoke detectors in interior corridors but shall be subject to all other applicable requirements imposed under Code Section 25-2-13.

(c) In dwellings, dwelling units, and other facilities listed in paragraph (1) of subsection (a) of this Code section with split levels, a smoke detector need be installed only on the upper level, provided the lower level is less than one full story below the upper level, except that if there is a door between levels then a detector is required on each level. Such detectors shall be connected to a sounding device or other detector to provide an alarm which will be audible in the sleeping areas.

(d) Detectors shall be listed and meet the installation requirements of NFPA 72. In addition, a one and one-half hour emergency power supply source is required on all detection systems required by this chapter and permitted after April 1, 1992, except where battery operated smoke detectors are allowed.

(e) Any complete automatic fire alarm system using automatic smoke detectors shall be installed in accordance with NFPA 72.

(f)(1) The provisions of this Code section may be enforced by local building and fire code officials in the case of residential buildings which are not covered by Code Section 25-2-13; provided, however, that this Code section shall not establish a special duty on said officials to inspect such residential facilities for compliance with this Code section; provided, further, that inspections shall not be conducted for the purpose of determining compliance with this Code section absent reasonable cause to suspect other building or fire code violations. The jurisdiction enforcing this Code section shall retain any fines collected pursuant to this subsection.

(2) Any occupant who fails to maintain a smoke detector in a dwelling, dwelling unit, or other facility, other than a nursing home, listed in subsection (a) of this Code section in good working order as required in this Code section shall be subject to a maximum fine of \$25.00, provided that a warning shall be issued for a first violation.

(3) Any operator of a nursing home who fails to install and maintain the smoke detectors required under paragraph (3) of subsection (a) of this Code section shall be sanctioned in accordance with Code Section 31-2-6.

(g) Failure to maintain a smoke detector in good working order in a dwelling, dwelling unit, or other facility listed in subsection (a) of this Code section in violation of this Code section shall not be considered evidence of negligence, shall not be considered by the court on any question of liability of any person, corporation, or insurer, shall not be any basis for cancellation of coverage or increase in insurance rates, and shall not diminish any recovery for damages arising out of the ownership, maintenance, or occupancy of such dwelling, dwelling unit, or other facility listed in subsection (a) of this Code section.

(h) The Safety Fire Commissioner is authorized and encouraged to inform the public through public service announcements of the availability of a limited number of battery operated smoke detectors which may be obtained by persons in need without charge from the office of the Safety Fire Commissioner or local fire departments. (Code 1981, § 25-2-40, enacted by Ga. L. 1987, p. 989, § 1; Ga. L. 1992, p. 2186, § 12; Ga. L. 1994, p. 1235, § 1; Ga. L. 2001, p. 860, § 1.)

**The 2001 amendment**, effective July 1, 2001, added paragraph (a)(3); in subsection (f), designated the existing provisions as paragraphs (1) and (2), inserted “, other than a nursing home,” in paragraph (2), and added paragraph (3).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1995, “Commission-

er” was substituted for “commissioner” in subsection (b); and “battery operated” was substituted for “battery-operated” in subsections (d) and (h).

**Law reviews.** — For annual survey article on real property law, see 52 Mercer L. Rev. 383 (2000).

**JUDICIAL DECISIONS**

**Failure to maintain smoke detectors.** — admissible in a civil case. *Wadkins v. Smallwood*, 243 Ga. App. 134, 530 S.E.2d 498 (2000).  
Evidence of a landlord's failure to maintain battery-operated smoke detectors was not



CHAPTER 3

LOCAL FIRE DEPARTMENTS GENERALLY

Article 1		Sec.	
General Provisions		25-3-21.	Definitions.
Sec.		25-3-22.	(For effective date, see note.)
25-3-1.	General powers of fire departments.		Notification that organization meets requirements; issuance of certificate of compliance.
25-3-2.	Powers of fire departments in event of emergencies generally.	25-3-23.	(For effective date, see note.)
25-3-3.	Provision of assistance during emergencies to federal agencies or officers and state, or political subdivisions.		General requirements; equipment and clothing; insurance.
		25-3-24.	Authority of executive director to determine compliance.
25-3-4.	Authority of counties, municipalities, or other political subdivisions to enact ordinances, regulations, or codes.	25-3-25.	(For effective date, see note.)
			Suspension or revocation of certificate of compliance; hearing by aggrieved departments; enforcement of suspensions or revocations.
25-3-5.	Operation of other fire departments within municipalities or counties.	25-3-26.	Duty of executive director to cooperate with fire department.
25-3-6.	Effect of article on powers and duties of other officials and departments.	25-3-27.	Construction of article.

Article 2	
Minimum Requirements	
25-3-20.	Legislative intent.

RESEARCH REFERENCES

**ALR.** — Municipal liability for negligent fire inspection and subsequent enforcement, 69 ALR4th 739.

ARTICLE 1

GENERAL PROVISIONS

**Cross references.** — Deputizing of local fire marshals, etc., as state officers, § 25-2-12.1.

**Editor's notes.** — Ga. L. 1984, p. 1000, § 2

designated the existing Code sections of this chapter (§§ 25-3-1 through 25-3-6) as Article 1 of the chapter.

RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Fires, § 1 et seq.

**25-3-1. General powers of fire departments.**

Any fire department of a county, municipality, or other political subdivision and any chartered fire department shall have the authority to:

- (1) Protect life and property against fire, explosions, hazardous materials, or electrical hazards;
- (2) Detect and prevent arson;
- (3) Administer and enforce the laws of this state; the rules and regulations adopted by the departments, boards, bureaus, commissions, and agencies of this state; and any ordinances, rules, regulations, or codes adopted by the county, municipality, or other political subdivision of this state that are related to the prevention and suppression of fires, explosions, or injuries from hazardous materials and explosions and the protection of life and property from such hazards;
- (4) Conduct programs of public education in fire prevention and safety;
- (5) Conduct emergency medical services and rescue assistance, subject to Chapter 11 of Title 31 and subject to the approval of the county, municipality, or other political subdivision;
- (6) Control and regulate the flow of traffic in areas of existing emergencies, including rail, highway, water, and air traffic; and
- (7) Perform all such services of a fire department as may be provided by law or which necessarily appertain thereto. (Ga. L. 1980, p. 1395, § 1.)

**25-3-2. Powers of fire departments in event of emergencies generally.**

In the event of any fire, explosion, bomb threat, or similar emergency, the fire department in any county, municipality, or other political subdivision shall be authorized to:

- (1) Enter any property, building, structure, vehicle, watercraft, aircraft, railroad car, or other place for the purpose of fighting the fire, explosion, or similar hazardous conditions or searching for a bomb or enter any such place which is, in the opinion of the chief officer of the fire department or his designee, endangered by fire, explosion, bomb threat, or similar hazardous conditions;
- (2) Cut any wires, electrical or otherwise, or turn off any utility, as deemed necessary to preserve life or property;
- (3) Prevent the blocking of any public or private street, road or alley, way or driveway, or emergency lane during any such emergency and remove any vehicles or other obstructions necessary;

(4) Confiscate supplies, chemicals, or equipment necessary for such emergency;

(5) Make any necessary tests; and

(6) Evacuate any building or area necessary. (Ga. L. 1980, p. 1395, § 2; Ga. L. 1983, p. 3, § 18; Ga. L. 1989, p. 271, § 1.)

**Cross references.** — Liability of members of fire departments for acts performed while fighting fires or for acts performed at scenes of emergencies, § 51-1-30.

### **25-3-3. Provision of assistance during emergencies to federal agencies or officers and state, or political subdivisions.**

Any fire department may provide assistance to any agency or officer of the United States government, of this state, or of any political subdivision or authority thereof as may be needed to respond to any emergency or disaster, including, but not limited to, floods, sabotage, civil disturbance, fire, earthquake, wind, storm, wave action, oil spill or other water contamination, epidemic, air contamination, blight, drought, infestation, explosion, riot, or energy emergency, as defined by Chapter 3 of Title 38, or to respond to hazardous materials as defined by Article 7 of Chapter 5 of Title 32. (Ga. L. 1980, p. 1395, § 4.)

### **25-3-4. Authority of counties, municipalities, or other political subdivisions to enact ordinances, regulations, or codes.**

The governing body of each county, municipality, or other political subdivision of the state shall have the power to enact such ordinances, regulations, or fire and life safety codes as may be necessary to carry out this article. (Ga. L. 1980, p. 1395, § 3; Ga. L. 1984, p. 1000, § 1.)

## **OPINIONS OF THE ATTORNEY GENERAL**

**Fire ordinances for day care centers.** — The authority of local governments to enact fire ordinances for day care centers is preempted by O.C.G.A. § 49-5-14 [repealed], which gives the Board of Human Resources authority to adopt fire safety codes for day care centers. 1984 Op. Att'y Gen. No. 84-9.

### **25-3-5. Operation of other fire departments within municipalities or counties.**

Nothing within this article shall be construed so as to permit a county or other fire department to operate within the limits of a municipality except by written or oral contract with the municipality. Nothing within this article shall be construed so as to permit a municipal fire department to operate in the unincorporated area of a county except by written or oral contract with the county. (Ga. L. 1980, p. 1395, § 5; Ga. L. 1984, p. 1000, § 1.)

**25-3-6. Effect of article on powers and duties of other officials and departments.**

This article shall not affect the duties, powers, or responsibilities of the Safety Fire Commissioner, the state fire marshal, the sheriff's office, the Department of Public Safety, local law enforcement agencies, the Department of Agriculture, the Department of Natural Resources, the Georgia Forestry Commission, the Department of Transportation, the Department of Defense, or the Department of Human Resources. (Ga. L. 1980, p. 1395, § 6; Ga. L. 1984, p. 1000, § 1; Ga. L. 1994, p. 1758, § 1.)

**OPINIONS OF THE ATTORNEY GENERAL**

**Fire ordinances for day care centers.** — The authority of local governments to enact fire ordinances for day care centers is preempted by O.C.G.A. § 49-5-14 [repealed], which gives the Board of Human Resources authority to adopt fire safety codes for day care centers. 1984 Op. Att'y Gen. No. 84-9.

**ARTICLE 2****MINIMUM REQUIREMENTS**

**Cross references.** — Special license plates for firefighters, § 40-2-78

**25-3-20. Legislative intent.**

It is the intention of the General Assembly of Georgia to establish minimum requirements for all fire departments operating in this state. The General Assembly recognizes that fire departments operating in this state cannot function effectively and efficiently as full-time fire departments without meeting or exceeding the minimum requirements established by this article. (Code 1981, § 25-3-20, enacted by Ga. L. 1984, p. 1000, § 3.)

**25-3-21. Definitions.**

As used in this article, the term:

(1) "Executive director" means the executive director of the Georgia Firefighter Standards and Training Council.

(2)(A) "Fire department" means any fire department which is authorized to exercise the general and emergency powers enumerated in Code Sections 25-3-1 and 25-3-2.

(B) "Fire department" also means any department, agency, organization, or company operating in this state with the intent and purpose of carrying out the duties, functions, powers, and responsibilities normally associated with a fire department. These duties, functions,



powers, and responsibilities include but are not limited to the protection of life and property against fire, explosions, or other hazards.

(3) “Firefighter” means any able-bodied person at least 18 years of age who has been duly appointed by a legally constituted fire department and who has the responsibility of preventing and suppressing fires, protecting life and property, and performing other duties enumerated in Code Sections 25-3-1 and 25-3-2. (Code 1981, § 25-3-21, enacted by Ga. L. 1984, p. 1000, § 3; Ga. L. 1985, p. 1493, § 1; Ga. L. 1995, p. 341, § 1.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Volunteer fire department.** — A volunteer fire department is a “fire department” within the meaning of O.C.G.A. § 25-3-21 and must therefore comply with the minimum requirements established for the operation of fire departments pursuant to O.C.G.A. Art. 2, Ch. 3, T. 25. 1986 Op. Att’y Gen. No. 86-8.

#### **25-3-22. (For effective date, see note.) Notification that organization meets requirements; issuance of certificate of compliance.**

In order for a fire department to be legally organized to operate in the State of Georgia, the chief administrative officer of the fire department shall notify the executive director that the organization meets the minimum requirements specified in Code Section 25-3-23 and the rules and regulations of the Georgia Firefighter Standards and Training Council to function as a fire department. If the council is satisfied that the fire department meets the minimum requirements contained in Code Section 25-3-23 and the rules and regulations of the Georgia Firefighter Standards and Training Council, he or she shall recommend to the Georgia Firefighter Standards and Training Council that a certificate of compliance be issued by the council to the fire department. If the council issues such certificate of compliance, the fire department shall be authorized to exercise the general and emergency powers set forth in Code Sections 25-3-1 and 25-3-2. (Code 1981, § 25-3-22, enacted by Ga. L. 1984, p. 1000, § 3; Ga. L. 1995, p. 341, § 2; Ga. L. 1998, p. 560, § 1; Ga. L. 2003, p. 888, § 1.)

**Delayed effective date.** — This Code section, as set out above, becomes effective July 1, 2004. Until July 1, 2004, this Code section reads as follows: “In order for a fire department to be legally organized to operate in the State of Georgia, the chief administrative officer of the fire department shall notify the executive director that the organization meets the minimum requirements specified in Code Section 25-3-23 and the rules and regulations of the Georgia Firefighter Standards and Training Council to function as a fire department. If the executive director is satisfied that the fire department meets the

minimum requirements contained in Code Section 25-3-23 and the rules and regulations of the Georgia Firefighter Standards and Training Council, he or she shall issue a certificate of compliance to the fire department and the fire department shall be authorized to exercise the general and emergency powers set forth in Code Sections 25-3-1 and 25-3-2.”

**The 2003 amendment**, effective July 1, 2004, in the second sentence, substituted “recommend to the Georgia Firefighter Standards and Training Council that a” for “issue a”, inserted “be issued by the coun-

cil", and substituted ". If the council issues such certificate of compliance," for "and".

**25-3-23. (For effective date, see note.) General requirements; equipment and clothing; insurance.**

(a) Except as otherwise provided in subsection (d) of this Code section, in order to be legally organized:

(1) A fire department shall comply with the following requirements:

(A) Be established to provide fire and other emergency and nonemergency services in accordance with standards specified solely by the Georgia Firefighter Standards and Training Council and the applicable local government;

(B) Be capable of providing fire protection 24 hours a day, 365 days per year;

(C) Be responsible for a defined area of operations depicted on a map located at the fire station, which area of operations shall have been approved and designated by the governing authority of the applicable county, municipality, or other political subdivision in the case of any county, municipal, or volunteer fire department; and

(D) Be staffed with a sufficient number of full-time, part-time, or volunteer firefighters who have successfully completed basic firefighter training as specified by the Georgia Firefighter Standards and Training Council; and

(2) A fire department shall possess the following items of approved equipment and protective clothing:

(A) A minimum of one fully equipped, operable pumper with a capacity of at least 750 GPM at 150 PSI and a tank capacity of a minimum of 250 gallons; provided, however, that previously approved fire apparatus which does not meet such minimum standards may be used in lieu of the minimum required pumper until replaced by the local authority;

(B) A minimum of equipment, appliances, adapters, and accessories necessary to perform and carry out the duties and responsibilities of a fire department set forth in Code Sections 25-3-1 and 25-3-2 as approved by the Georgia Firefighter Standards and Training Council;

(C) A minimum of two approved self-contained breathing apparatus for each pumping apparatus as approved by the Georgia Firefighter Standards and Training Council; and

(D) A minimum issue of sufficient personal protective clothing to permit each member to perform safely the duties of a firefighter.

(b) A legally organized fire department shall purchase and maintain sufficient insurance coverage on each member of the fire department to pay claims for injuries sustained en route to, during, and returning from fire calls or other emergencies and disasters and scheduled training sessions.

(c) On and after July 1, 1998, the Georgia Firefighter Standards and Training Council shall be authorized, by rules and regulations, to establish and modify minimum requirements for all fire departments operating in this state, provided that such requirements are equal to or exceed the requirements provided in subsections (a) and (b) of this Code section. (Code 1981, § 25-3-23, enacted by Ga. L. 1984, p. 1000, § 3; Ga. L. 1985, p. 149, § 25; Ga. L. 1990, p. 354, § 1; Ga. L. 1995, p. 341, § 3; Ga. L. 1998, p. 560, § 2; Ga. L. 2003, p. 888, § 2.)

**Delayed effective date.** — This Code section, as set out above, becomes effective July 1, 2004. Until July 1, 2004, this Code section reads as follows: “(a) Except as otherwise provided in subsection (d) of this Code section, in order to be legally organized:

“(1) A fire department shall comply with the following requirements:

“(A) Be established in accordance with the provisions of the National Fire Protection Association Standard 1201;

“(B) Be capable of providing fire protection 24 hours a day, seven days a week;

“(C) Be responsible for a defined area of operations depicted on a map located at the fire station; and

“(D) Be staffed with a sufficient number of qualified firefighters who are full time, part time, or volunteers and who shall have successfully completed an approved basic fire-fighting course conducted by or through the Georgia Fire Academy; and

“(2) A fire department shall possess the following items of equipment and protective clothing:

“(A) A minimum of one fully equipped, operable pumper with a capacity of at least 100 GPM at 120 PSI and a tank capacity of a minimum of 250 gallons; provided, however, a minimum of one fully equipped, operable, and approved pumper of at least 750 GPM capacity is recommended;

“(B) A minimum of equipment, appliances, adapters, and accessories necessary to

perform and carry out the duties and responsibilities of a fire department set forth in Code Sections 25-3-1 and 25-3-2;

“(C) A minimum of two approved self-contained breathing apparatus for each pumping apparatus; and

“(D) A minimum issue of sufficient personal protective clothing to permit each member to perform safely the duties of a firefighter.

“(b) A minimum of 15 firefighters for each fire department is recommended; however, departments existing on or before July 1, 1984, shall be exempt from this recommendation.

“(c) A legally organized fire department shall purchase and maintain sufficient insurance coverage on each member of the fire department to pay claims for injuries sustained en route to, during, and returning from fire calls or other emergencies and disasters and scheduled training sessions.

“(d) On and after July 1, 1998, the Georgia Firefighter Standards and Training Council shall be authorized, by rules and regulations, to establish and modify minimum requirements for all fire departments operating in this state, provided that such requirements are equal to or exceed the requirements provided in subsections (a), (b), and (c) of this Code section.”

**The 2003 amendment**, effective July 1, 2004, rewrote this Code section.

## 25-3-24. Authority of executive director to determine compliance.

The executive director may consult with and consider the recommendations of the director of the Georgia Forestry Commission, the director of



the Georgia Fire Academy, the state fire marshal, and the governing authority of any county or municipality in which the fire department is located to determine if individual fire departments are complying with the minimum provisions of this article and serving the best interests of the citizens of the area of its operations. (Code 1981, § 25-3-24, enacted by Ga. L. 1984, p. 1000, § 3; Ga. L. 1995, p. 341, § 4.)

**25-3-25. (For effective date, see note.) Suspension or revocation of certificate of compliance; hearing by aggrieved departments; enforcement of suspensions or revocations.**

(a) The certificate of compliance issued by the council shall be subject to suspension or revocation by the council at any time it receives satisfactory evidence that the fire department is not maintaining sufficient personnel, equipment, or insurance required by Code Section 25-3-23 or the rules and regulations of the Georgia Firefighter Standards and Training Council pursuant to subsection (d) of Code Section 25-3-23.

(b) The chief administrative officer of any fire department aggrieved by a decision of the council under subsection (a) of this Code section may, within 30 days of the date of such decision, request a hearing on the matter before the council. Following a hearing before the council, the chief administrative officer of the fire department affected shall be served with a written decision of the council announcing whether the certificate of compliance shall remain revoked or suspended or whether it shall be reinstated.

(c) The council shall not suspend or revoke any certificate of compliance for failure to meet firefighter training requirements when such failure was due to unavailability of required training from or through the Georgia Fire Academy.

(d) The council may refer suspensions or revocations to the Attorney General for enforcement. Upon referral from the council, the Attorney General may bring a civil action to enjoin any organization which is not in compliance with the applicable requirements of this chapter from performing any or all firefighting functions until such requirements are met by such organization. (Code 1981, § 25-3-25, enacted by Ga. L. 1984, p. 1000, § 3; Ga. L. 1995, p. 341, § 5; Ga. L. 1998, p. 560, § 3; Ga. L. 2003, p. 888, § 3.)

**Delayed effective date.** — This Code section, as set out above, becomes effective July 1, 2004. Until July 1, 2004, this Code section reads as follows: “The certificate of compliance issued by the executive director shall be subject to suspension or revocation at any time he or she receives satisfactory evidence that:

“(1) The fire department is not maintain-

ing sufficient personnel, equipment, or insurance required by Code Section 25-3-23 or the rules and regulations of the Georgia Firefighter Standards and Training Council pursuant to subsection (d) of Code Section 25-3-23; or

“(2) The fire department is not serving the best interests of the citizens of its area of operations.”



**The 2003 amendment**, effective July 1, 2004, rewrote this Code section.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2003, in subsection (a), the colon was deleted from the end of

the introductory paragraph, the paragraph (1) designation was deleted, “The” was substituted for “the”, and a period was substituted for “; or”.

### **25-3-26. Duty of executive director to cooperate with fire department.**

The executive director shall cooperate with newly formed and existing fire departments to ensure that all fire departments in this state are in compliance with the provisions of this article by July 1, 1986. (Code 1981, § 25-3-26, enacted by Ga. L. 1984, p. 1000, § 3; Ga. L. 1985, p. 149, § 25; Ga. L. 1995, p. 341, § 6.)

### **25-3-27. Construction of article.**

This article shall not be construed to amend, modify, or repeal any of the provisions of Chapter 4 of this title, known as the “Georgia Firefighter Standards and Training Act,” nor shall this article be construed to restrict the requirements of any other provisions relating to fire departments, equipment, or personnel. (Code 1981, § 25-3-27, enacted by Ga. L. 1984, p. 1000, § 3; Ga. L. 1992, p. 6, § 25.)

## CHAPTER 4

## FIREFIGHTER STANDARDS AND TRAINING

Article 1		Sec.	
General Provisions			
Sec.			Georgia Firefighter Standards and Training Council — Functions and powers.
25-4-1.	Short title.	25-4-7.1.	(Effective July 1, 2004) Appointment and compensation of executive director; assistants.
25-4-2.	(For effective date, see note.) Definitions.		
25-4-3.	(For effective date, see note.) Georgia Firefighter Standards and Training Council — Establishment and organization; advisory committee; expenses and allowances.	25-4-8.	Qualifications of firefighters generally.
		25-4-9.	(For effective date, see note.) Basic firefighter training course; transfer of certification.
25-4-4.	Georgia Firefighter Standards and Training Council — Eligibility of members for public office.	25-4-10.	(For effective date, see note.) Mandatory annual training.
		25-4-11.	Adoption of higher training requirements by employing agencies.
25-4-5.	Georgia Firefighter Standards and Training Council — Administrative assignment to Department of Public Safety; source of funds; authority to accept gifts, etc.	25-4-12.	Applicability of chapter.
			<b>Article 2</b>
			<b>Airport Firefighters</b>
25-4-6.	Georgia Firefighter Standards and Training Council — Meetings; quorum; annual report.	25-4-30.	Definitions.
		25-4-31.	Minimum standards and training for personnel assigned as airport firefighters; annual reevaluation.
25-4-7.	(For effective date, see note.)		

## ARTICLE 1

## GENERAL PROVISIONS

**Cross references.** — Special license plates for firefighters, § 40-2-78. Liability of officers and agents for acts performed while fighting fires or performing duties at the scene of emergencies, § 51-1-30.

**Editor's notes.** — Ga. L. 1980, p. 1242, §§ 1 and 2, as enacted, purported to amend the Georgia Firefighter Standards and Train-

ing Act (Ga. L. 1971, p. 693) which is codified as Art. 1 of this chapter. However, since it has been determined that the 1980 Act, which deals with airport firefighters, was intended to be a new Act rather than an amendment to the Georgia Firefighter Standards and Training Act, the 1980 Act has been codified as Art. 2 of this chapter.

## OPINIONS OF THE ATTORNEY GENERAL

**How probated first offenders to be treated under O.C.G.A. Title 25, Chapter 4, Article 1.** — An individual in the process of serving a period of probation under O.C.G.A. Title 42, Chapter 8, Article 3, relating to first offenders, should be treated, for purposes of O.C.G.A. Title 25, Chapter 4, Article 1, in same manner as an individual who has satis-

factorily fulfilled terms of or who has been released from such probation. 1981 Op. Att'y Gen. No. U81-12.

**Probation of first offender not conviction under O.C.G.A. Title 25, Chapter 4, Article 1.** — A person in the process of serving a period of probation under O.C.G.A. Title 42, Chapter 8, Article 3, relating to first

offenders, has not been convicted for purposes of O.C.G.A. Title 25, Chapter 4, Article 1. 1981 Op. Att'y Gen. No. U81-12.

Fulfillment of terms of probation under O.C.G.A. Title 42, Chapter 8, Article 3, relat-

ing to first offenders, or release by court prior to termination of a period of probation is not a criminal conviction for purposes of O.C.G.A. Title 25, Chapter 4, Article 1. 1981 Op. Att'y Gen. No. U81-12.

### 25-4-1. Short title.

This chapter shall be known and may be cited as the "Georgia Firefighter Standards and Training Act." (Ga. L. 1971, p. 693, § 1.)

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Fires, § 50 et seq.

### 25-4-2. (For effective date, see note.) Definitions.

As used in this chapter, the term:

(1) "Candidate" means a prospective firefighter who has not yet been certified by the council as having met the requirements of this chapter.

(2) "Certified firefighter" or "state certified firefighter" means any firefighter who has been certified by the council as having met the requirements of this chapter.

(3) "Council" means the Georgia Firefighter Standards and Training Council.

(4) "Firefighter" means a trained individual who is a full-time employee, part-time employee, or volunteer for a municipal, county, state, or private incorporated fire department and as such has duties of responding to mitigate a variety of emergency and nonemergency situations where life, property, or the environment is at risk, which may include without limitation fire suppression; fire prevention activities; emergency medical services; hazardous materials response and preparedness; technical rescue operations; search and rescue; disaster management and preparedness; community service activities; response to civil disturbances and terrorism incidents; nonemergency functions including training, preplanning, communications, maintenance, and physical conditioning; and other related emergency and nonemergency duties as may be assigned or required; provided, however, that a firefighter's assignments may vary based on geographic, climatic, and demographic conditions or other factors including training, experience, and ability.

(5) "Full-time" means employed for compensation on a basis of at least 40 hours per week by any municipal, county, state, or private incorporated fire department.

(6) “Part-time” means employed for compensation on less than a full-time basis by any municipal, county, state, or private incorporated fire department.

(7) “Volunteer” means not employed for compensation by but appointed and regularly enrolled to serve as a firefighter for any municipal, county, state, or private incorporated fire department. (Ga. L. 1971, p. 693, § 2; Ga. L. 1987, p. 373, § 1; Ga. L. 2003, p. 888, § 4.)

**Delayed effective date.** — This Code section, as set out above, becomes effective July 1, 2004. Until July 1, 2004, this Code section reads as follows: “As used in this chapter, the term:

“(1) “Candidate” means a prospective firefighter who has not yet been certified by the council as having met the requirements of this chapter.

“(2) “Council” means the Georgia Firefighter Standards and Training Council.

“(3) “Firefighter” means any person who is employed as a professional firefighter on a full-time basis of at least 40 hours per week by any municipal, county, or state government fire department employing three or more firefighters and who has the responsibility of preventing and suppressing fires, protecting life and property, and enforcing municipal, county, and state fire prevention codes, as well as enforcing any law pertain-

ing to the prevention and control of fires, or who is employed full time as a public safety officer by any municipal, county, or state government employing three or more public safety officers and who has responsibilities which include preventing and suppressing fires, protecting life and property, and enforcing ordinances and state laws.”

**The 2003 amendment**, effective July 1, 2004, added paragraph (2), redesignated former paragraphs (2) and (3) as present paragraphs (3) and (4), respectively, rewrote present paragraph (4), and added paragraphs (5) through (7).

**Editor’s notes.** — Ga. L. 1980, p. 1242, § 1 purported to amend this section. However, since it has been determined that the 1980 Act, which deals with airport firefighters, was intended to be a new Act (see Editor’s note at Art. 2 of this chapter), § 1 of the 1980 Act has been codified at § 25-4-30.

### **25-4-3. (For effective date, see note.) Georgia Firefighter Standards and Training Council — Establishment and organization; advisory committee; expenses and allowances.**

(a) (For effective date, see note.) The Georgia Firefighter Standards and Training Council is established. The council shall be composed of eleven members, one of whom shall be the Safety Fire Commissioner or the designated representative of the Safety Fire Commissioner. Two members shall be appointed by the Lieutenant Governor. Two members shall be appointed by the Speaker of the House of Representatives. The remaining six members shall be appointed by the Governor subject to the following requirements:

(1) One member shall be a member of the governing authority of a county;

(2) One member shall be a member of the governing authority of a municipality;

(3) One member shall be a city or county manager;



(4) One member shall be the chief of a county or municipal fire department; and

(5) Two members shall be state certified firefighter training officers.

(b) The members of the council appointed by the Governor pursuant to subsection (a) of this Code section shall be appointed at the sole discretion of the Governor. However, the Governor may consider for appointment to the council persons suggested for membership thereon as follows:

(1) The Association County Commissioners of Georgia may suggest the names of three persons for each appointment pursuant to paragraph (1) of subsection (a) of this Code section;

(2) The Georgia Municipal Association may suggest the names of three persons for each appointment pursuant to paragraph (2) of subsection (a) of this Code section;

(3) The Georgia City and County Management Association may suggest the names of three persons for each appointment pursuant to paragraph (3) of subsection (a) of this Code section;

(4) The Georgia Association of Fire Chiefs may suggest the names of three persons for each appointment pursuant to paragraph (4) of subsection (a) of this Code section; and

(5) The Executive Board of the Georgia State Firemen's Association may suggest the names of three persons for each appointment pursuant to paragraph (5) of subsection (a) of this Code section.

(c) (For effective date, see note.) (1) The first members of the council appointed by the Governor pursuant to subsection (a) of this Code section shall be appointed to take office on January 1, 1986. The two members appointed pursuant to paragraphs (1) and (2) of subsection (a) of this Code section shall be appointed for initial terms of one year, the two members appointed pursuant to paragraphs (3) and (4) of subsection (a) of this Code section shall be appointed for initial terms of two years, and the two members appointed pursuant to paragraph (5) of subsection (a) of this Code section shall be appointed for initial terms of three years. Thereafter, successors shall be appointed for terms of three years as the respective terms of office expire.

(2) The member appointed by the Lieutenant Governor and the member appointed by the Speaker of the House of Representatives shall each serve for terms concurrent with terms of members of the General Assembly.

(3) All members shall serve until their successors are appointed and qualified. In the event of a vacancy in the membership of the council for any reason, including ceasing to hold an office or position required for membership on the council, the Governor shall fill such vacancy for the

unexpired term; except that a vacancy in either of those members of the council appointed by the Lieutenant Governor or the Speaker of the House of Representatives shall be filled for the remainder of the unexpired term in the same manner as the original appointment. In order for the Governor to consider the names of persons suggested for membership on the council pursuant to subsection (b) of this Code section, such names must be submitted to the Governor by the respective organizations at least 60 days but not more than 90 days prior to the expiration of the respective terms of office or prior to the appointment of the initial members of the council who take office on January 1, 1986. The Governor shall be authorized, but not required, to request the appropriate organization designated in subsection (b) of this Code section to suggest the names of three persons for the Governor's consideration in making an appointment to fill a vacancy.

(d) (For effective date, see note.) At the first regular meeting of the council held in each even-numbered year, the council shall elect a chairperson and such other officers from its own membership as it deems necessary to serve until successors are elected by the council as provided in this subsection.

(e) The council may, from time to time, designate an advisory committee of not more than three members to assist and advise the council in carrying out its duties under this chapter. The members of any such advisory committee shall serve at the pleasure of the council.

(f) Each member of the council and each member of an advisory committee of the council, in carrying out their official duties, shall be entitled to receive the same expense and mileage allowance authorized for members of professional licensing boards by subsection (f) of Code Section 43-1-2. The funds for such expenses and allowances shall be paid from funds appropriated or available to the Department of Public Safety. (Ga. L. 1971, p. 693, § 3; Ga. L. 1976, p. 1725, § 9; Ga. L. 1985, p. 1493, § 2; Ga. L. 1986, p. 10, § 25; Ga. L. 2000, p. 1706, § 19; Ga. L. 2003, p. 888, § 5.)

**Delayed effective date.** — This Code section, as set out above, becomes effective July 1, 2004. Until July 1, 2004, this Code section reads as follows: “(a) The Georgia Firefighter Standards and Training Council is established. The council shall be composed of seven members, one of whom shall be the Safety Fire Commissioner or the designated representative of the Safety Fire Commissioner. The remaining six members shall be appointed by the Governor subject to the following requirements:

“(1) One member shall be a member of the governing authority of a county;

“(2) One member shall be a member of the governing authority of a municipality;

“(3) One member shall be a city or county manager;

“(4) One member shall be the chief of a county or municipal fire department; and

“(5) Two members shall be state certified firefighter training officers.

“(b) The members of the council appointed by the Governor pursuant to subsection (a) of this Code section shall be appointed at the sole discretion of the Governor. However, the Governor may consider for appointment to the council persons

suggested for membership thereon as follows:

“(1) The Association County Commissioners of Georgia may suggest the names of three persons for each appointment pursuant to paragraph (1) of subsection (a) of this Code section;

“(2) The Georgia Municipal Association may suggest the names of three persons for each appointment pursuant to paragraph (2) of subsection (a) of this Code section;

“(3) The Georgia City and County Management Association may suggest the names of three persons for each appointment pursuant to paragraph (3) of subsection (a) of this Code section;

“(4) The Georgia Association of Fire Chiefs may suggest the names of three persons for each appointment pursuant to paragraph (4) of subsection (a) of this Code section; and

“(5) The Executive Board of the Georgia State Firemen’s Association may suggest the names of three persons for each appointment pursuant to paragraph (5) of subsection (a) of this Code section.

“(c) The first members of the council appointed by the Governor pursuant to subsection (a) of this Code section shall be appointed to take office on January 1, 1986. The two members appointed pursuant to paragraphs (1) and (2) of subsection (a) of this Code section shall be appointed for initial terms of one year, the two members appointed pursuant to paragraphs (3) and (4) of subsection (a) of this Code section shall be appointed for initial terms of two years, and the two members appointed pursuant to paragraph (5) of subsection (a) of this Code section shall be appointed for initial terms of three years. Thereafter, successors shall be appointed for terms of three years as the respective terms of office expire. All members shall serve until their successors are appointed and qualified. In the event of a vacancy in the membership of the council for any reason, including ceasing to hold an office or position required for membership on the council, the Governor shall fill such vacancy for the unexpired term. In order for the Governor to consider the names of persons suggested for membership on the council pursuant to subsection (b) of this Code section, such names must be submitted to the Governor by the respective

organizations at least 60 days but not more than 90 days prior to the expiration of the respective terms of office or prior to the appointment of the initial members of the council who take office on January 1, 1986. The Governor shall be authorized, but not required, to request the appropriate organization designated in subsection (b) of this Code section to suggest the names of three persons for the Governor’s consideration in making an appointment to fill a vacancy.

“(d) At the first regular meeting of the council held in each even-numbered year, the council shall elect a chairman and such other officers from its own membership as it deems necessary to serve until successors are elected by the council as provided in this subsection.

“(e) The council may, from time to time, designate an advisory committee of not more than three members to assist and advise the council in carrying out its duties under this chapter. The members of any such advisory committee shall serve at the pleasure of the council.

“(f) Each member of the council and each member of an advisory committee of the council, in carrying out their official duties, shall be entitled to receive the same expense and mileage allowance authorized for members of professional licensing boards by subsection (f) of Code Section 43-1-2. The funds for such expenses and allowances shall be paid from funds appropriated or available to the Department of Public Safety.”

**The 2003 amendment**, effective July 1, 2004, in subsection (a), substituted “eleven members” for “seven members” in the second sentence and added the third sentence; in subsection (c), designated the existing provisions as paragraphs (c)(1) and (c)(3), added paragraph (c)(2), and inserted the exception at the end of the first sentence in paragraph (c)(3); and substituted “chairperson” for “chairman” near the middle of subsection (d).

**Administrative rules and regulations.** — Organization of Georgia Firefighters Minimum Standards Council and the minimum standards and qualifications of firefighters, Official Compilation of Rules and Regulations of State of Georgia, Rules of Georgia Firefighter Standards and Training Council, Chapters 205-1-1 and 205-2-1.



**25-44. Georgia Firefighter Standards and Training Council — Eligibility of members for public office.**

Membership on the council does not constitute public office, and no member shall be disqualified from holding public office by reason of his membership. (Ga. L. 1971, p. 693, § 4; Ga. L. 1977, p. 549, § 1.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, §§ 1, 6, 7, 11, 48 et seq., 57, 62. **C.J.S.** — 67 C.J.S., Officers and Public Employees, §§ 12, 21, 22, 37 et seq.

**25-45. Georgia Firefighter Standards and Training Council — Administrative assignment to Department of Public Safety; source of funds; authority to accept gifts, etc.**

The council is assigned to the Department of Public Safety for administrative purposes. The funds necessary to carry out this chapter shall come from funds appropriated to and available to the council and from any other available funds. The council is authorized to accept and use gifts, grants, and donations for the purpose of carrying out this chapter. The council is also authorized to accept and use property, both real and personal, and services for the purpose of carrying out this chapter. (Ga. L. 1971, p. 693, § 4; Ga. L. 1976, p. 1725, § 9; Ga. L. 1977, p. 549, § 1.)

**Cross references.** — Assignment for administrative purposes, § 50-4-3.

**25-46. Georgia Firefighter Standards and Training Council — Meetings; quorum; annual report.**

The business of the council shall be conducted in the following manner:

(1) The council shall hold at least two regular meetings each year at the call of the chairman or upon the written request of four members of the council. Four members of the council shall constitute a quorum.

(2) The council shall make an annual report of its activities to the Governor and to the General Assembly and shall include in the report its recommendations for appropriate legislation. (Ga. L. 1971, p. 693, § 5; Ga. L. 1985, p. 1493, § 3.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1986, a misspelling of “chairman” was corrected in the first sentence of paragraph (1).



## RESEARCH REFERENCES

**Am. Jur. 2d.** — 2 Am. Jur. 2d, Administrative Law, § 105.

**C.J.S.** — 73 C.J.S., Public Administrative Law and Procedures, § 20 et seq.

**25-4-7. (For effective date, see note.) Georgia Firefighter Standards and Training Council — Functions and powers.**

The council is vested with the following functions and powers:

(1) To promulgate rules and regulations for the administration of the council;

(2) To provide rules of procedure for its internal management and control;

(3) To enter into contracts or do such things as may be necessary and incidental to the administration of its authority pursuant to this chapter;

(4) (For effective date, see note.) To establish uniform minimum standards for the employment and training of full-time, part-time, or volunteer firefighters, fire and life safety educators, fire inspectors, and fire investigators, including qualifications and requirements, which are consistent with this chapter;

(5) (For effective date, see note.) To establish minimum curriculum requirements for schools operated by or for any employing agency for the specific purpose of training firefighter recruits or full-time, part-time, or volunteer firefighters, fire and life safety educators, fire inspectors, and fire investigators;

(6) To approve institutions and facilities for school operation by or for any employing agency for the specific purpose of training firefighters and firefighter recruits;

(7) To make or support studies on any aspect of fire-fighting education and training or recruitment;

(8) To make recommendations concerning any matter within its purview;

(9) (For effective date, see note.) To establish basic firefighter training requirements for full-time, part-time, and volunteer firefighters;

(10) (For effective date, see note.) To certify any person satisfactorily complying with the training program established in accordance with paragraph (9) of this Code section and the qualifications for employment covered in this chapter; and

(11) (For effective date, see note.) To issue a certificate to any person who has received training in another state, when the council has determined that the training was at least equivalent to that required by

the council for approved firefighter education and training programs in this state and when the person has satisfactorily complied with all other requirements of this chapter. (Ga. L. 1971, p. 693, § 6; Ga. L. 2003, p. 888, § 6.)

**Delayed effective date.** — This Code section, as set out above, becomes effective July 1, 2004. Until July 1, 2004, this Code section reads as follows: “The council is vested with the following functions and powers:

“(1) To promulgate rules and regulations for the administration of the council;

“(2) To provide rules of procedure for its internal management and control;

“(3) To enter into contracts or do such things as may be necessary and incidental to the administration of its authority pursuant to this chapter;

“(4) To establish uniform minimum standards for the employment and training of firefighters, including qualifications and requirements, which are consistent with this chapter;

“(5) To establish minimum curriculum requirements for schools operated by or for any employing agency for the specific purpose of training firefighter recruits or firefighters;

“(6) To approve institutions and facilities for school operation by or for any employing agency for the specific purpose of training firefighters and firefighter recruits;

“(7) To make or support studies on any aspect of fire-fighting education and training or recruitment;

“(8) To make recommendations concerning any matter within its purview;

“(9) To establish a firefighter recruit training program administered by such agencies and institutions as it approves and to issue or authorize the issuance of a certificate of completion to any person satisfactorily completing the training program;

“(10) To issue a certificate of compliance to any person satisfactorily complying with the training program established in accordance with paragraph (9) of this Code section and the qualifications for employment covered in this chapter; and

“(11) To issue, at its discretion, a certificate to any person who has received training in another state, when the council has determined that the training was at least equivalent to that required by the council for approved firefighter education and training programs in this state and when the person has satisfactorily complied with all other requirements of this chapter.”

**The 2003 amendment**, effective July 1, 2004, substituted “full-time, part-time, or volunteer firefighters, fire and life safety educators, fire inspectors, and fire investigators” for “firefighters” in paragraphs (4) and (5), rewrote paragraph (9), substituted “certify” for “issue a certificate of compliance to” at the beginning of paragraph (10), and deleted “, at its discretion,” following “To issue” at the beginning of paragraph (11).

## OPINIONS OF THE ATTORNEY GENERAL

**Georgia Firefighter Standards and Training Council has authority to establish qualifications and requirements**, including curriculum, for firefighters and employing agencies, and any waiver of curriculum re-

quirements or new categories of certification can be authorized only by amendment of existing regulations or promulgation of new ones. 1977 Op. Att’y Gen. No. 77-44.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 2 Am. Jur. 2d, Administrative Law, § 52 et seq.

**C.J.S.** — 73 C.J.S., Public Administrative Law and Procedure, § 25 et seq.

**25-4-7.1. (Effective July 1, 2004) Appointment and compensation of executive director; assistants.**

(a) The council shall appoint and establish the compensation of an executive director who shall serve at the pleasure of the council.

(b) The executive director may contract for such services and employ such other professional, technical, and clerical personnel as may be necessary and convenient to carry out the purposes of this chapter. (Code 1981, § 25-4-7.1, enacted by Ga. L. 2003, p. 888, § 7.)

**Effective date.** — This Code section becomes effective July 1, 2004.

**25-4-8. Qualifications of firefighters generally.**

(a) Except as provided in Code Section 25-4-12, any person employed or certified as a firefighter shall:

(1) Be at least 18 years of age;

(2) Not have been convicted of a felony in any jurisdiction or of a crime which if committed in this state would constitute a felony under the laws of this state within ten years prior to employment, provided that a person who has been convicted of a felony more than five but less than ten years prior to employment may be certified and employed as a firefighter when the person has:

(A) Successfully completed a training program following the Georgia Fire Academy curriculum and sponsored by the Department of Corrections;

(B) Earned and possesses a first class firefighter diploma;

(C) Been recommended to a fire department by the proper authorities at the institution at which the training program was undertaken; and

(D) Met all other requirements as set forth in this chapter.

The council shall be the final authority with respect to authorizing employment and certification of a person who has been convicted of a felony more than five but less than ten years prior to seeking employment when the person is seeking employment as a firefighter for any municipal, county, or state fire department which employs three or more firefighters who work a minimum of 40 hours per week and has the responsibility of preventing and suppressing fires, protecting life and property, and enforcing municipal, county, and state codes, as well as enforcing any law pertaining to the prevention and control of fires;

(3) Have a good moral character as determined by investigation under procedure approved by the council;



(4) Be fingerprinted and a search made of local, state, and national fingerprint files to disclose any criminal record;

(5) Be in good physical condition as determined by a medical examination and successfully pass the minimum physical agility requirements as established by the council; and

(6) Possess or achieve within 12 months after employment a high school diploma or a general education development equivalency.

(b) For the purposes of paragraph (2) of subsection (a) of this Code section, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof, unless such plea of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or unless the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction was had or shall have received a certificate of good conduct granted by the State Board of Pardons and Paroles pursuant to the provisions of law to remove a disability under law because of such conviction.

(c)(1) For the purposes of making determinations relating to eligibility under paragraph (2) of subsection (a) of this Code section, a local fire department shall provide information relative to prospective employees to the local law enforcement agency and a state fire department shall provide information relative to prospective employees to a state law enforcement agency. Such local or state law enforcement agency shall be authorized to obtain conviction data with respect to such prospective employees of a local or state fire department as authorized in this subsection. The local or state law enforcement agency shall submit to the Georgia Crime Information Center two complete sets of fingerprints of the applicant for appointment or employment, the required records search fees, and such other information as may be required. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the local or state law enforcement agency in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check or if there is no such finding. All conviction data received by the local or state law enforcement agency shall not be a public record, shall be privileged, and shall not be disclosed to any other person or agency except as provided in this subsection and except to any



person or agency which otherwise has a legal right to inspect the employment file. All such records shall be maintained by the local or state law enforcement agency pursuant to laws regarding such records and the rules and regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as applicable. As used in this subsection, "conviction data" means a record of a finding or verdict of guilty or plea of guilty or plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(2) The local or state law enforcement agency shall provide to the chief of the fire department which requested information on an applicant any criminal data indicating that the applicant was convicted of a felony. Such information may be provided to the council. The provisions of paragraph (1) of this subsection relating to privileged information and records of conviction data shall apply to any information provided by a law enforcement agency to a fire department. (Ga. L. 1971, p. 693, § 7; Ga. L. 1977, p. 1224, § 7; Ga. L. 1980, p. 601, § 1; Ga. L. 1982, p. 989, §§ 1, 2; Ga. L. 1983, p. 3, § 18; Ga. L. 1985, p. 283, § 1; Ga. L. 1995, p. 325, § 1.)

**Cross references.** — Qualifications of peace officers generally, § 35-8-8.

#### OPINIONS OF THE ATTORNEY GENERAL

**O.C.G.A. § 25-4-8(2) to be strictly construed.** — As with any statute which imposes a penalty for forfeiture, O.C.G.A. § 25-4-8(2) should be strictly construed. 1981 Op. Att'y Gen. No. U81-12.

**"Conviction" construed.** — The word "conviction," strictly construed, means an adjudication of guilt which is final. 1981 Op. Att'y Gen. No. U81-12.

**Fulfillment of probation terms or release prior to termination of probation not a criminal conviction.** — The fulfillment of the terms of probation under Ga. L. 1968, p. 324 (see O.C.G.A. Title 42, Chapter 8, Arti-

cle 3), or the release by the presiding court prior to the termination of a period of probation is not a criminal conviction for purposes of Ga. L. 1971, p. 693 (see O.C.G.A. Title 25, Chapter 4, Article 1). 1976 Op. Att'y Gen. No. 76-130.

An **"airport firefighter,"** in addition to meeting minimum training requirements for airport firefighters contained in O.C.G.A. § 25-4-31, must meet basic qualifications for a "firefighter" as specified in O.C.G.A. § 25-4-8. 1982 Op. Att'y Gen. No. 82-73.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, §§ 11, 48 et seq., 71 et seq.

**C.J.S.** — 67 C.J.S., Officers and Public Employees, § 21 et seq.

**25-4-9. (For effective date, see note.) Basic firefighter training course; transfer of certification.**

(a) (For effective date, see note.) Full-time, part-time, and volunteer firefighters shall successfully complete a basic training course. The council

shall determine the course content, number of hours, and all other matters relative to basic firefighter training. Upon satisfactory completion of such basic training, a firefighter shall be issued a certificate of completion evidencing the same. Each firefighter shall be required to successfully complete such basic training course within 12 months after being employed or appointed as a firefighter.

(b) A firefighter certified by the council may, upon termination of employment from any fire department and upon agreement with a subsequently employing fire department, transfer such certification to the employing fire department.

(c) Notwithstanding the provisions of subsection (b) of this Code section, any local fire department may refuse to accept the transfer of previously acquired certification and may require any newly employed firefighter to complete the basic training course provided for in subsection (a) of this Code section. (Ga. L. 1971, p. 693, § 8; Ga. L. 1985, p. 1493, § 4; Ga. L. 2002, p. 660, § 4; Ga. L. 2002, p. 1259, § 11; Ga. L. 2003, p. 888, § 8.)

**Delayed effective date.** — Subsection (a), as set out above, becomes effective July 1, 2004. Until July 1, 2004, subsection (a) reads as follows: “In addition to complying with the preemployment standards as set forth in Code Section 25-4-8, each and every candidate, within 12 months after being appointed as a full-time paid member of any fire department or fire division of any department of public safety which employs three or more firefighters, shall specifically complete at least a basic training course of 120 hours of instruction. The council shall determine the courses, the number of hours per course, and all matters relative to the

basic training course. Upon satisfactory completion of the course, a firefighter shall receive a certificate from the council evidencing his satisfactory completion of the minimum standards of the training program.”

**The 2002 amendments.** — The first 2002 amendment, effective July 1, 2002, substituted “firefighters” for “firemen” in the first sentence of subsection (a). The second 2002 amendment, effective July 1, 2002, made identical changes.

**The 2003 amendment,** effective July 1, 2004, rewrote subsection (a).

## OPINIONS OF THE ATTORNEY GENERAL

**Certification and training of federally paid employees considered firefighters.** — Federally paid employees of a fire department subject to this article who are considered “firefighters” by virtue of the nature of their duties and their status as “employees” must obtain certification under the Georgia Firefighter Standards and Training Act, (see

O.C.G.A. § 25-4-1 et seq.) including all required training even if the training covers activities which are not part of the employees’ duties; employees who are not considered “firefighters” may acquire training, but cannot receive certification under the Act. 1977 Op. Att’y Gen. No. 77-44.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, §§ 11, 48 et seq.

**C.J.S.** — 67 C.J.S., Officers and Public Employees, §§ 22, 130.

**25-4-10. (For effective date, see note.) Mandatory annual training.**

As a condition of continued certification, all firefighters shall train, drill, or study at schools, classes, or courses at the local, area, or state level, as specified by the council. Authorized leaves of absence are expected. (Ga. L. 1971, p. 693, § 11; Ga. L. 2003, p. 888, § 9.)

**Delayed effective date.** — This Code section, as set out above, becomes effective July 1, 2004. Until July 1, 2004, this Code section reads as follows: “As a condition of tenure or continued employment, all firefighters shall train, drill, or study at least 120 clock hours in each calendar year at schools, classes, or courses at the local, area, or state level, as provided by the council. Authorized leaves of absence are expected.”

**The 2003 amendment,** effective July 1, 2004, in the first sentence, substituted “continued certification” for “tenure or continued employment”, deleted “at least 120 clock hours in each calendar year” following “study” and substituted “specified” for “provided” near the end.

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, §§ 11, 48 et seq.

**C.J.S.** — 67 C.J.S., Officers and Public Utilities, §§ 22, 130.

**25-4-11. Adoption of higher training requirements by employing agencies.**

This chapter shall provide only the minimum qualification standards in training requirements for firefighters in this state and does not restrict any employing agency from setting and establishing requirements that exceed these minimum standards. (Ga. L. 1971, p. 693, § 9.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, §§ 11, 48 et seq.

**C.J.S.** — 67 C.J.S., Officers and Public Employees, § 21 et seq.

**25-4-12. Applicability of chapter.**

Except as otherwise provided in Article 2, nothing in this chapter shall apply to firefighters employed on July 1, 1971, and such firefighters are not required to meet the requirements of Code Section 25-4-8 or Code Section 25-4-9 as a condition of tenure or continued employment; nor shall their failure to fulfill such requirements make them ineligible for any promotional examination for which they are otherwise eligible, affect in any way any pension rights to which they are otherwise eligible, or affect in any way pension rights to which they may be entitled on July 1, 1971. The council shall have the authority to investigate qualifications of, and in its discretion to issue certificates to, those previously trained firefighters employed on July 1, 1971. (Ga. L. 1971, p. 693, § 10.)



ARTICLE 2  
AIRPORT FIREFIGHTERS

**Cross references.** — Airports generally, Ch. 2, T. 6, and Ch. 3, T. 6.

**Editor's notes.** — Ga. L. 1980, p. 1242, §§ 1 and 2, as enacted, purported to amend the Georgia Firefighter Standards and Training Act (Ga. L. 1971, p. 693), which is codified as Art. 1 of this chapter. However,

since it has been determined that the 1980 Act, which deals with airport firefighters, was intended to be a new Act rather than an amendment to the Georgia Firefighter Standards and Training Act, the 1980 Act has been codified as Art. 2 of this chapter.

**25-4-30. Definitions.**

As used in this article, the term:

(1) "Airport" means any airport located in this state which has regularly scheduled commercial air carrier service or commuter airline service as required for certification under Section 139.49 of the Federal Aviation Administration regulations.

(2) "Airport firefighter" means any person assigned to any airport located in this state who performs the duties of fire fighting, rescue, fire inspection, or any other duties normally associated with airport fire suppression or fire safety. (Ga. L. 1980, p. 1242, § 1.)

**Editor's notes.** — See Editor's note at § 25-4-2. 139.49 of the Federal Aviation Administration regulations, referred to in this section,

**Code of Federal Regulations.** — Section is codified at 14 CFR § 139.49.

**25-4-31. Minimum standards and training for personnel assigned as airport firefighters; annual reevaluation.**

(a) Any person assigned as an airport firefighter at any airport shall, as a minimum, meet the minimum physical fitness requirements as approved by the Georgia Firefighter Standards and Training Council.

(b) Any person assigned as an airport firefighter at any airport shall satisfactorily complete, within 60 days following such person's assignment, a course of instruction which shall be specifically developed by the Georgia Fire Academy for airport firefighters and approved by the council.

(c) As a minimum, the course of instruction for persons assigned to airports as airport firefighters shall meet the standards for airport firefighter professional qualifications, National Fire Protection Association, 1003, and shall also meet or exceed any standards, provisions, or requirements of the Federal Aviation Administration relating to airport firefighter training or qualifications. Firefighter requirements 1 and 2 of the National Fire Protection Association, 1001, are exempted.



(d) The Georgia Fire Academy shall develop the course of instruction with the advice of the Air Line Pilots Association Fire and Rescue Committee, the Aviation Committee of the National Fire Protection Association, the Federal Aviation Administration, at least two members of representative airport authorities, and other officials as selected or needed.

(e) When an airport firefighter satisfactorily completes the course of instruction prescribed in subsection (b) of this Code section, the executive director of the Georgia Firefighter Standards and Training Council shall cause a certificate of satisfactory completion to be issued.

(f) In addition to the initial training, performance, and physical fitness requirements, an airport firefighter shall satisfactorily complete a reevaluation each calendar year thereafter. The reevaluation shall be conducted by the Georgia Firefighter Standards and Training Council or its designee. It shall include both written and performance tests, shall include, as a minimum, 50 percent of the performance standards of the National Fire Protection Association, 1003, and shall meet applicable Federal Aviation Administration performance standards.

(g) Fire officers who have attained the rank of lieutenant or higher and who have been assigned to an airport at least six months prior to July 1, 1980, are exempt from the minimum physical fitness requirements as referred to in subsection (a) of this Code section; however, such fire officers shall meet all other requirements of this Code section. (Ga. L. 1980, p. 1242, § 2; Ga. L. 1985, p. 1493, § 5; Ga. L. 1995, p. 341, § 7.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Intention of legislature was to include all persons assigned as airport firefighters,** whether on a full-time, part-time or intermittent basis. 1980 Op. Att’y Gen. No. U80-52.

**Georgia Fire Academy not required to follow administrative procedure.** — The Georgia Fire Academy is not an agency for purposes of O.C.G.A. Title 50, Chapter 13, and is not required to follow the procedure for adoption of rules as set forth in that chapter in developing a course of instruction. 1980 Op. Att’y Gen. No. U80-52.

**Requirement of qualifying as “firefighter”.** — An “airport firefighter,” in addition to meeting minimum training requirements for airport firefighters contained in O.C.G.A. § 25-4-31, must meet basic qualifications for a “firefighter” as specified in O.C.G.A. § 25-4-8. 1982 Op. Att’y Gen. No. 82-73 (decided prior to 1985 amendment

deleting former O.C.G.A. § 25-4-31(h), requiring airport firefighters to meet all qualifications in O.C.G.A. Title 25, Chapter 4).

**Certification requirements for National Guard firefighters.** — A member of the National Guard who is United States Air Force qualified as a firefighter may act as an airport firefighter in this State without being certified, but may do so only within sixty (60) days of the date that the member was first assigned to a commercial airport in this State. To the extent that 1982 Op. Att’y Gen. No. 82-73 indicates that national guardsmen acting as airport firefighters must comply with firefighter requirements under O.C.G.A. Title 25, Chapter 4, it is not to be followed, since that portion of the opinion was rendered invalid by the 1985 amendment to O.C.G.A. § 25-4-31. 1986 Op. Att’y Gen. No. 86-6.

CHAPTER 5

RESOLUTION OF WAGES, HOURS, WORKING CONDITIONS  
OF FIREFIGHTERS

Sec.		Sec.	
25-5-1.	Short title.		
25-5-2.	Definitions.		tice, and conduct of hearings;
25-5-3.	Declaration of public policy.		transmittal of findings and opin-
25-5-4.	Right of firefighters to bargain collectively.	25-5-10.	ion; effect of decision.
25-5-5.	Selection of bargaining agent by firefighters; recognition by corporate authority.	25-5-11.	Mediation board — Factors to be considered in reaching decision.
25-5-6.	Obligation of corporate authority and agent to meet and confer in good faith; reduction of agreement to written contract; limitation as to duration of contract.	25-5-12.	Payment of expenses of mediation.
25-5-7.	Submission of unresolved issues to mediation.	25-5-13.	Agreements constituting collective bargaining contracts; required provisions; engaging in work stoppages, slowdowns, or strikes by firefighters.
25-5-8.	Mediation board — Composition and selection; chairman.	25-5-14.	Service of notice of request for collective bargaining upon corporate authorities by bargaining agent.
25-5-9.	Mediation board — Time, no-		Applicability of chapter.

25-5-1. Short title.

This chapter shall be known and may be cited as the “Firefighter’s Mediation Act.” (Ga. L. 1971, p. 565, § 1.)

RESEARCH REFERENCES

ALR. — First Amendment protection for discharge, transfer, or discipline because of publicly employed firefighters subjected to speech, 106 ALR Fed. 396.

25-5-2. Definitions.

As used in this chapter, the term:

(1) “Corporate authorities” means the proper officials within any municipality whose duty it is to establish the wages, salaries, rates of pay, hours, working conditions, and other terms and conditions of employment of firefighters, as defined in paragraph (2) of this Code section, whether they are the mayor, city manager, city administrator, city council, board of aldermen, director of personnel, personnel board, or any combination thereof, or by whatever other name the same may be designated. The term shall also mean the employing authority for firefighters at Central State Hospital.

(2) “Firefighter” means the permanent members of any paid fire department of any municipality of this state having a population of 20,000

or more according to the United States decennial census of 1980 or any future such census who are employed for and subject to fire-fighting duties. (Ga. L. 1971, p. 565, § 3.)

**Law reviews.** — For article, "Employment Law Responsibilities of Public Employers in Georgia," see 5 Ga. St. B.J. 10 (1999).

### 25-5-3. Declaration of public policy.

(a) The protection of the public health, safety, and welfare demands that the permanent members of any paid fire department of a municipality should not be accorded the right to strike or engage in any work stoppage or slowdown. This necessary prohibition, however, shall not prohibit such municipal employees from being represented by a labor organization of their choice and from bargaining collectively concerning wages, rates of pay, and other terms and conditions of employment.

(b) It is declared to be the public policy of this state to accord to the permanent members of any paid fire department of those municipalities which are covered by this chapter all of the privileges enumerated in subsection (a) of this Code section other than the right to strike or to engage in any work stoppage or slowdown. To provide for the exercise of these privileges, a method of mediation of disputes is established.

(c) The establishment of a method of mediation referred to in subsection (b) of this Code section shall not, however, in any way whatever, be deemed to be a recognition by the state of compulsory mediation or arbitration as a superior method of settling labor disputes between employees who possess the right to strike and their employers but rather shall be deemed to be a recognition solely of the necessity to provide some alternative mode of settling disputes where employees are, as a matter of public policy, denied the right to strike. (Ga. L. 1971, p. 565, § 2.)

### JUDICIAL DECISIONS

**Cited in** *Burnley v. Thompson*, 524 F.2d 1233 (5th Cir. 1975).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 48 Am. Jur. 2d, Labor and Labor Relations, §§ 324 et seq., 392 et seq., 443 et seq., 566 et seq.      **C.J.S.** — 51 C.J.S., Labor Relations, § 33. 51A C.J.S., Labor Relations, §§ 268, 306.

### 25-5-4. Right of firefighters to bargain collectively.

Firefighters shall have the right to bargain collectively with their respective corporate authorities and to be represented by a labor organization in



such collective bargaining as to wages, rates of pay, hours, working conditions, and all other terms and conditions of employment. (Ga. L. 1971, p. 565, § 4.)

### JUDICIAL DECISIONS

Cited in *Burnley v. Thompson*, 524 F.2d 1233 (5th Cir. 1975).

### RESEARCH REFERENCES

C.J.S. — 51 C.J.S., Labor Relations, of bargaining-unit determination in state §§ 148-150. public employment labor relations, 96 ALR. — Who are supervisors for purposes ALR3d 723.

#### **25-5-5. Selection of bargaining agent by firefighters; recognition by corporate authority.**

The organization selected by vote of the majority of the firefighters in any fire department shall be recognized by the proper corporate authority, provided the organization does not advocate striking and has a "no strike" clause in its constitution and bylaws, as the sole and exclusive bargaining agent for all of the members of the fire department unless and until recognition of the labor organization is withdrawn by vote of a majority of the firefighters of the fire department. In lieu of an organization, a person may be selected as the bargaining agent and have the same obligations and privileges. (Ga. L. 1971, p. 565, § 5.)

### RESEARCH REFERENCES

C.J.S. — 51 C.J.S., Labor Relations, misrepresentations in campaign literature, §§ 211, 212. material, or leaflets on validity of representation election, 3 ALR3d 889.  
ALR. — Effect of alleged misstatements or

#### **25-5-6. Obligation of corporate authority and agent to meet and confer in good faith; reduction of agreement to written contract; limitation as to duration of contract.**

It shall be the obligation of the proper corporate authority and the bargaining agent to meet and confer in good faith within 30 days after receipt of a written notice from the bargaining agent of the request for a meeting for collective bargaining purposes. This obligation may include the duty to cause any agreement resulting from negotiations to be reduced to a written contract. No such contract shall exceed the term of one year. (Ga. L. 1971, p. 565, § 6.)



**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 48A Am. Jur. 2d, Labor and Labor Relations, §§ 2969 et seq., 2977, 3148 et seq.      **C.J.S.** — 51 C.J.S., Labor Relations, §§ 217-224.

**25-5-7. Submission of unresolved issues to mediation.**

If the bargaining agent and the corporate authorities are unable, within 30 days from and including the date of their first meeting, to reach an agreement on a contract, any and all unresolved issues shall be submitted to mediation. (Ga. L. 1971, p. 565, § 7.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 48A Am. Jur. 2d, Labor and Labor Relations, §§ 3268, 3615 et seq.      **C.J.S.** — 51A C.J.S., Labor Relations, §§ 402, 403.

**25-5-8. Mediation board — Composition and selection; chairman.**

Within five days from the expiration of the 30 day period referred to in Code Section 25-5-7, the bargaining agent and the corporate authorities shall each select and name one mediator and shall immediately thereafter notify each other in writing of the name and address of the person so selected. The bargaining agent may name as its mediator a working firefighter who shall be an active member of the Professional Firefighters of Georgia; and the corporate authorities may name as its mediator a member of the Georgia Municipal Association. The two mediators so selected and named shall, within ten days from and after the expiration of the five-day period mentioned in this Code section, agree upon the selection of a third mediator. If, on the expiration of the period allowed therefor, the mediators are unable to agree upon the selection of a third mediator, the American Arbitration Association shall select him upon request in writing from either the bargaining agent or the corporate authorities. The third mediator, whether selected as a result of agreement between the two mediators previously selected or selected by the American Arbitration Association, shall act as chairman of the mediation board. (Ga. L. 1971, p. 565, § 8.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 48A Am. Jur. 2d, Labor and Labor Relations, § 3616.      **C.J.S.** — 51A C.J.S., Labor Relations, § 460.

**25-5-9. Mediation board — Time, notice, and conduct of hearings; transmittal of findings and opinion; effect of decision.**

(a) The mediation board, acting through its chairman, shall call a hearing to be held within ten days after the date of the appointment of the

chairman and, acting through its chairman, shall give at least seven days' notice in writing to each of the other two mediators, the bargaining agent, and the corporate authorities of the time and place of the hearing. The hearing shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other data deemed relevant by the mediators may be received in evidence. The mediators shall have the power to request by subpoena the attendance and testimony of witnesses and the production of books, records, and other evidence relative or pertinent to the issues presented to them for determination.

(b) Hearings conducted by the mediators shall be concluded within 20 days of the time of commencement. Within ten days after the conclusion of the hearings, the mediators shall make written findings and a written opinion upon the issues presented, a copy of which shall be mailed or otherwise transmitted to the bargaining agent or its attorney or other designated representative and the corporate authorities. A majority decision of the mediators shall be advisory in nature and shall not be binding upon either the bargaining agent or the corporate authorities. (Ga. L. 1971, p. 565, § 9.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 2 Am. Jur. 2d, Administrative Law, § 105.

**C.J.S.** — 73 C.J.S., Public Administrative Law and Procedure, § 18.

#### **25-5-10. Mediation board — Factors to be considered in reaching decision.**

The mediators shall conduct the hearing and render their decision upon the basis of a prompt, peaceful, and just settlement of wage or hour disputes between the firefighters and the corporate authority. The factors, among others, to be given weight by the mediators in arriving at a decision shall include:

- (1) A comparison of wages or hourly conditions of employment of the fire department in question with wage rates or hourly conditions of employment of fire departments in municipalities of comparable size;
- (2) The interest and welfare of the public; and
- (3) A comparison of the peculiarities of fire-fighting employment in regard to other trades or professions, specifically:
  - (A) The hazards of employment;
  - (B) The physical qualifications;
  - (C) The educational qualifications;

(D) The mental qualifications; and

(E) The job training and skills. (Ga. L. 1971, p. 565, § 10.)

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 48 Am. Jur. 2d, Labor and Labor Relations, § 452.

**C.J.S.** — 51A C.J.S., Labor Relations, §§ 402, 403.

#### 25-5-11. Payment of expenses of mediation.

The expenses incurred by the bargaining agent in connection with the mediation shall be borne by the bargaining agent. The expenses incurred by the corporate authorities in connection with the mediation shall be borne by such authorities. The necessary expenses incurred by the third mediator shall be borne equally between the bargaining agent and the corporate authorities. (Ga. L. 1971, p. 565, § 11.)

#### 25-5-12. Agreements constituting collective bargaining contracts; required provisions; engaging in work stoppages, slowdowns, or strikes by firefighters.

(a) Any agreement actually negotiated between the bargaining agent and the corporate authorities either before or within 30 days after mediation shall constitute the collective bargaining contract governing firefighters and the municipality for the period stated therein. Such period shall not exceed one year.

(b) Any collective bargaining agreement negotiated under this chapter shall specifically provide that the firefighters who are subject to its terms shall have no right to engage in any work stoppage, slowdown, or strike, the consideration for such provision being the right to a resolution of disputed questions. Whether or not a collective bargaining agreement has been negotiated, no firefighter shall engage in any work stoppage, slowdown, or strike at any time. (Ga. L. 1971, p. 565, § 12; Ga. L. 2003, p. 140, § 25.)

**The 2003 amendment**, effective May 14, 2003, part of an Act to revise, modernize, and correct the Code, designated the existing provisions of this Code section as subsections (a) and (b).

**Cross references.** — Strikes by state employees, § 45-19-1 et seq.

### JUDICIAL DECISIONS

**Cited in** Burnley v. Thompson, 524 F.2d 1233 (5th Cir. 1975).

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 48A Am. Jur. 2d, Labor and Labor Relations, §§ 3148 et seq., 3154 et seq., 3163.

**C.J.S.** — 51 C.J.S., Labor Relations, § 217.

**25-5-13. Service of notice of request for collective bargaining upon corporate authorities by bargaining agent.**

Whenever wages, rates of pay, or any other matter requiring appropriation of money by any municipality are included as a matter of collective bargaining conducted under this chapter, it is the obligation of the bargaining agent to serve written notice of a request for collective bargaining on the corporate authorities at least 120 days before the last day on which money can be appropriated by the municipality to cover the contract period which is the subject of the collective bargaining procedure. (Ga. L. 1971, p. 565, § 13.)

**RESEARCH REFERENCES**

**C.J.S.** — 51 C.J.S., Labor Relations, § 152.

**25-5-14. Applicability of chapter.**

(a) Before a municipality with a population of 20,000 or more and its firefighters may come under this chapter, the governing authority of the municipality must agree by ordinance that the municipality will be so covered.

(b) In no case may a city with a population of less than 20,000 come under this chapter. (Ga. L. 1971, p. 565, § 14.)

**Law reviews.** — For article, "Employment Law Responsibilities of Public Employers in Georgia," see 5 Ga. St. B.J. 10 (1999).



## CHAPTER 6

## MUTUAL AID RESOURCE PACTS

Sec.		Sec.	
25-6-1.	"Jurisdiction" defined.		of gifts by pacts; entry into agreements with state and federal agencies by pacts.
25-6-2.	Formation of pacts authorized; status of members of fire departments of member jurisdictions.	25-6-7.	Joining of and withdrawal from pacts by jurisdictions not having fire departments.
25-6-3.	Establishment of pacts; organizational meeting; adoption of articles, bylaws, and regulations; board of directors; officers, agents, and personnel.	25-6-8.	Mutual Aid Resource Pact Districts — Establishment; joining or organization of pacts by non-member jurisdictions desiring to participate in mutual aid.
25-6-4.	Purpose of pacts; powers and duties of pacts generally.	25-6-9.	Mutual Aid Resource Pact Districts — Merger with other districts; communication and cooperation between districts.
25-6-5.	Liability for failure to respond for purposes of extinguishing fires or other immediate response emergencies; privileges and immunities; liability for loss of men or equipment.	25-6-10.	Continuation of operation of preexistent pacts.
25-6-6.	Appropriation of funds for pacts by member jurisdictions; receipt	25-6-11.	Penalty for violations of chapter.

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**Cross references.** — Definition of "pact,"  
§ 25-6-2.

**25-6-1. "Jurisdiction" defined.**

For the purposes of this chapter, the term "jurisdiction" means a federal agency, a state agency, a local governmental subdivision of this state or an adjoining state, or an industrial or private organization which has established a fire-fighting department that is responsible for fire protection services within the area under the control, supervision, or management of the specific "jurisdiction." A "jurisdiction" may be one of the following, but is not limited to the following: towns, cities, counties outside corporate limits, industrial complexes, specific fire protection areas, military bases, private fire departments, volunteer fire departments, and the like. (Ga. L. 1976, p. 742, § 2; Ga. L. 1982, p. 955, §§ 2, 4.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 521.

**ALR.** — Use beyond municipal limits of municipal equipment for extinguishment of fires, 122 ALR 1158.

**25-6-2. Formation of pacts authorized; status of members of fire departments of member jurisdictions.**

Whenever two or more jurisdictions, as defined by Code Section 25-6-1, within or adjacent to this state, by written resolution authorize their respective fire departments to render aid and assistance in the extinguishment of fires or other immediate response emergencies outside of their respective jurisdictions, they may, if they so desire, form a district mutual aid system or pact, which shall be a public corporation. It is the primary intent that such system or pact be established for fire emergencies; however, due to the diverse emergency services expected of fire departments, mutual aid systems or pacts may include responses for any form of immediate response emergency as specified by members of the system or pact. Members of fire departments of member jurisdictions shall be considered as officers of a public municipal corporation and shall enjoy the privileges, rights, exemptions, immunities, and duties of such; and this shall apply to paid, volunteer, or private members when responding to or returning from rendering aid in an emergency under a mutual aid system or a pact. As used in this chapter, "pact" means a mutual aid resource pact. (Ga. L. 1976, p. 742, § 1; Ga. L. 1982, p. 955, §§ 1, 4.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 18 Am. Jur. 2d, Corporations, § 30. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 196, 521.

**ALR.** — Use beyond municipal limits of municipal equipment for extinguishment of fires, 122 ALR 1158.

**25-6-3. Establishment of pacts; organizational meeting; adoption of articles, bylaws, and regulations; board of directors; officers, agents, and personnel.**

(a) When two or more jurisdictions desire to establish a pact, each jurisdiction shall designate its fire chief or person or position in charge of its fire department to act for that jurisdiction on all matters relating to the activities and functions of the pact, once it has been established. The jurisdiction shall designate the person or position and its intent to be a member of a pact by a written resolution. The resolutions shall be forwarded to the state fire marshal. Upon receipt of at least two resolutions, the state fire marshal or his authorized representative shall call the first organizational meeting of the system by giving notice to all persons designated by the resolutions to act for potential member jurisdictions. Each jurisdiction shall send its designated person or his authorized representative to the organizational and subsequent meetings. Such person shall be entitled to one vote in all proceedings.

(b) At the organizational meeting, the pact members shall adopt articles of association and bylaws and regulations for the future government and

operation of the pact, which shall be effective upon submission to and approval by the Attorney General, who shall cause the same to be promptly recorded by the Secretary of State. Such recording shall formally establish the pact.

(c) At the organizational meeting, the member delegates shall also elect a board of directors consisting of such members as may be determined by the organization delegates. The board of directors shall serve for one year or until their successors are elected and qualified, provided that at the organizational or any subsequent meeting the member delegates may vote for staggered terms for all members of the board of directors, the length of which shall not exceed five years or until the director's successor is elected and qualified.

(d) The directors shall choose from their number the officers of the pact, who shall have such duties and powers as the bylaws allow. Within the limits of funds available to it, the board of directors may employ and fix the compensation of such agents and other personnel as the board deems necessary to carry out the coordinating functions and other responsibilities of the system. Such personnel shall include a nontactical coordinator who shall serve at the pleasure of the board and who shall have and exercise such powers and authority as the board may delegate to him. (Ga. L. 1976, p. 742, § 4; Ga. L. 1982, p. 955, §§ 1, 5.)

#### **25-6-4. Purpose of pacts; powers and duties of pacts generally.**

(a) It shall be the primary purpose of a pact to coordinate the emergency fire services of all jurisdictions belonging to it, so as to provide better, more efficient, and more effective cooperation in the protection of life and property from fires or other immediate response emergencies within the area served by the pact.

(b) Any pact established under authority of this chapter is charged with the responsibility of establishing an overall plan or plans for carrying out the intended purpose and other provisions of this chapter. No pact may be established unless it complies with this chapter. Within the limits of funds available to it, the pact may acquire and operate property and equipment, including, but not limited to, a dispatch center and a communications center; and it may extend the advantages of group purchasing and benefits to jurisdictions that are members of the pact. Member jurisdictions shall adopt the training programs of the Georgia Fire Academy in order to ensure a basic standardization of operations and philosophy; this requirement shall not be construed as limiting the training practices or requirements of any jurisdiction, as it is intended that the programs of the Georgia Fire Academy be used to supplement the training practices and requirements of member jurisdictions. The pact shall cooperate with other state and federal agencies and with civil defense authorities on all levels. The



state fire marshal may render advice, recommendations, and assistance to a pact, upon request. Members of a pact shall cooperate with the state fire marshal on matters relating to fire investigations and the enforcement of the arson statutes of the state. (Ga. L. 1976, p. 742, § 3.)

**25-6-5. Liability for failure to respond for purposes of extinguishing fires or other immediate response emergencies; privileges and immunities; liability for loss of men or equipment.**

(a) There shall be no liability imposed by law on a pact or any member jurisdiction or its personnel for failure to respond for the purpose of extinguishing or controlling any fire or other immediate response emergency. This immunity is not exclusive of other similar immunities granted by statute or common law.

(b) Any firefighter or other person who is an employee or member of a jurisdiction of a pact while engaged in a duty or activity in connection with this chapter or pursuant to orders or instructions of his superiors, shall be entitled to all rights, privileges, exemptions, and immunities to which he would be entitled if the duty or activity were performed within that firefighter's or other person's home jurisdiction.

(c) The loss of men or equipment while in operation under a pact agreement shall be borne as if the loss occurred in the man's or equipment's home jurisdiction. (Ga. L. 1976, p. 742, § 5.)

**25-6-6. Appropriation of funds for pacts by member jurisdictions; receipt of gifts by pacts; entry into agreements with state and federal agencies by pacts.**

Jurisdictions belonging to a pact may raise and appropriate money for the purpose of implementing and operating the pact. The pact may receive, hold, and use gifts, bequests, and devises, either outright or in trust, for purposes consistent with this chapter. A pact may enter into agreements with appropriate state and federal agencies to participate in programs which make assistance available to local fire departments. (Ga. L. 1976, p. 742, § 6.)

**RESEARCH REFERENCES**

**ALR.** — Use beyond municipal limits of municipal equipment for extinguishment of fires, 122 ALR 1158.



**25-6-7. Joining of and withdrawal from pacts by jurisdictions not having fire departments.**

(a) Following the initial establishment of a pact, in accordance with procedures established in the bylaws of the pact, jurisdictions which do not have fire departments may join an established pact upon meeting such conditions as the board of directors may fix.

(b) Not less than 90 days after delivering written notice to an officer of the pact, a member jurisdiction may withdraw from a pact after a vote of its governing body. In the event the withdrawal of one or more jurisdictions reduces the number of members but two or more members remain, it is intended that the remaining members should continue with the operation of the pact. (Ga. L. 1976, p. 742, § 7; Ga. L. 1982, p. 955, §§ 3, 6.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 196.

**25-6-8. Mutual Aid Resource Pact Districts — Establishment; joining or organization of pacts by nonmember jurisdictions desiring to participate in mutual aid.**

(a) Pact districts shall be established along the boundaries of counties in which member jurisdictions of a pact are located.

(b) If a nonmember jurisdiction is located within the boundaries of an established pact, it must become a part of that pact should it desire to participate in mutual aid activities. If a county or counties without member jurisdictions are encircled by counties having members of a common pact, the jurisdictions in such county or counties must join the pact should they desire to participate in mutual aid activities. If a county which has no member jurisdictions borders with counties having members of different pacts, the jurisdictions within the county which desire to participate in mutual aid activities must:

(1) Join with one of the bordering pact counties, provided that jurisdictions in the same county shall not be permitted to become members of different pacts; or

(2) Organize a pact, provided two or more jurisdictions are involved, as set forth in Code Section 25-6-2. (Ga. L. 1976, p. 742, § 8; Ga. L. 1982, p. 955, §§ 1, 7.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 196, 521.

**25-6-9. Mutual Aid Resource Pact Districts — Merger with other districts; communication and cooperation between districts.**

(a) Should the member jurisdictions of one or more pact districts desire to merge with another district, the merger may be accomplished in keeping with the intent of Code Section 25-6-8 and as agreed by the board of directors of the concerned pacts.

(b) Nothing in this chapter shall be construed as prohibiting communication or cooperation among various pact districts. The boards of directors of various pact districts are encouraged to establish agreements for emergency responses across district lines to fringe areas in the event of emergency and to establish communications to aid in solving problems common to the districts. (Ga. L. 1976, p. 742, § 9.)

**25-6-10. Continuation of operation of preexistent pacts.**

Pacts in existence on July 4, 1976, are authorized to continue to operate under their articles of incorporation or organizational policy. (Ga. L. 1976, p. 742, § 11.)

**25-6-11. Penalty for violations of chapter.**

Any member of the governing body of a jurisdiction or any other person who violates this chapter shall be guilty of a misdemeanor and may be prosecuted by the Attorney General. (Ga. L. 1976, p. 742, § 10.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 36 Am. Jur. 2d, Forfeitures and Penalties, § 1 et seq.      **C.J.S.** — 70 C.J.S., Penalties, § 1 et seq.

CHAPTER 7

GEORGIA FIRE ACADEMY

Sec.		Sec.	
25-7-1.	Short title.	25-7-6.	Administrative assignment of academy to Department of Public Safety; acceptance of gifts, grants, and donations by board.
25-7-2.	Creation; purposes.		
25-7-3.	"Board" defined.	25-7-7.	Persons to whom training programs to be made available; establishing fees; eligibility.
25-7-4.	Powers and duties of Board of Public Safety as to academy generally; selection and compensation of superintendent of academy; creation of advisory council; selection and reimbursement of members.	25-7-8.	Requirement of attendance at academy training programs; effect of academy training programs upon other training programs.
25-7-5.	Responsibilities of superintendent of academy.		

OPINIONS OF THE ATTORNEY GENERAL

**Membership in Employees' Retirement System of Georgia.** — Employees of the Georgia Fire Academy are legally entitled to membership in the Employees' Retirement System of Georgia. 1983 Op. Att'y Gen. No. 83-24.

25-7-1. Short title.

This chapter shall be known and may be cited as the "Georgia Fire Academy Act." (Ga. L. 1976, p. 1725, § 1.)

25-7-2. Creation; purposes.

There is created the Georgia Fire Academy, the purposes of which shall be, through training and research:

- (1) To reduce the costs in suffering and property loss resulting from fire;
- (2) To provide professional training to paid, volunteer, and other publicly or privately employed firefighters at a minimal cost to them and their employers;
- (3) To assist the state and its counties, municipalities, and other political subdivisions and the officers thereof in the investigation and determination of the causes of fires;
- (4) To develop new methods of fire prevention and fire fighting;
- (5) To provide facilities for testing fire-fighting and prevention equipment; and

(6) To assist the state and its counties, municipalities, and other political subdivisions in the training and operations of fire department-related emergency medical services and rescue services. (Ga. L. 1976, p. 1725, § 2; Ga. L. 2002, p. 660, § 4; Ga. L. 2002, p. 1259, § 11.)

**The 2002 amendments.** — The first 2002 amendment, effective July 1, 2002, substituted “firefighters” for “firemen” in paragraph (2). The second 2002 amendment, effective July 1, 2002, made identical changes.

### **25-7-3. “Board” defined.**

As used in this chapter, “board” means the Board of Public Safety.

**Editor’s notes.** — Effective July 1, 1980, Ga. L. 1980, p. 431, § 1, abolished the Georgia Fire Academy Board. By the same law the General Assembly decreed that the Board of Public Safety replace any reference to the Georgia Fire Academy Board.

### **25-7-4. Powers and duties of Board of Public Safety as to academy generally; selection and compensation of superintendent of academy; creation of advisory council; selection and reimbursement of members.**

(a) The Board of Public Safety is authorized and empowered to establish, operate, and maintain the Georgia Fire Academy for the purposes enumerated in Code Section 25-7-2. The board is authorized and empowered to do all things and to take whatever action is necessary to accomplish these purposes, including, but not limited to, the establishment and conduct of training programs and the promulgation of rules and regulations relative thereto. The board shall select the superintendent of the academy and shall fix the compensation for the superintendent.

(b) The board is authorized and directed to create an advisory council to advise and assist it in carrying out its duties and responsibilities under this chapter. The membership of the advisory council shall be as the board determines, except that such membership shall include at least one representative from each of the following organizations: the Association County Commissioners of Georgia, the Georgia Municipal Association, and the Insurance Services Office. The director of the Georgia Firefighter Standards and Training Council shall also be a member of the advisory council. The members of the advisory council shall serve without compensation, but they may be reimbursed in the same manner as state officials and employees for travel and other expenses actually incurred by them in carrying out their duties as members of the council. (Ga. L. 1976, p. 1725, § 4; Ga. L. 1980, p. 431, § 2.)

### **25-7-5. Responsibilities of superintendent of academy.**

The superintendent of the Georgia Fire Academy shall be responsible for the selection of a staff. He shall also be responsible for the execution of all



policies, programs, directives, and decisions promulgated by the Board of Public Safety and for the direction of the staff and the daily operation of the academy. (Ga. L. 1976, p. 1725, § 5.)

**25-7-6. Administrative assignment of academy to Department of Public Safety; acceptance of gifts, grants, and donations by board.**

(a) The Georgia Fire Academy is assigned to the Department of Public Safety for administrative purposes only, as described in Code Section 50-4-3.

(b) The Board of Public Safety is authorized to accept gifts, grants, and donations for the purposes of carrying out this chapter. The board is also authorized to accept property, both real and personal, and services for the purposes of carrying out this chapter. (Ga. L. 1976, p. 1725, § 6.)

**25-7-7. Persons to whom training programs to be made available; establishing fees; eligibility.**

Subject to the rules and regulations prescribed by the Board of Public Safety, the training program of the academy shall be made available to all firefighters and may also be made available to other persons who evidence interest in entering the fire-fighting profession. The board is authorized to prescribe fees to cover all or a part of the cost of furnishing the training, under such rules and regulations as the board shall prescribe. The state, municipalities, and counties are authorized to expend funds for the purpose of paying such fees. The board is given full authority to decide who shall be allowed to enroll in the training program of the academy. (Ga. L. 1976, p. 1725, § 7.)

**OPINIONS OF THE ATTORNEY GENERAL**

**Board of Public Safety is authorized to provide firefighting training to employees of firefighting organization.** — The Board of the Georgia Fire Academy (now Board of Public Safety) is authorized to provide firefighting training to employees of a private, profit-making firefighting organization and to prescribe fees to cover all or a part of the cost of such training. 1979 Op. Att'y Gen. No. 79-43.

**25-7-8. Requirement of attendance at academy training programs; effect of academy training programs upon other training programs.**

It is not the intention of this chapter that it be mandatory that any firefighter be required to attend the academy. The training program established at the academy shall not supersede any training program for firefighters now in existence or hereafter established but shall be separate and apart from any other training programs for firefighters. (Ga. L. 1976, p. 1725, § 8.)

CHAPTER 8

REGULATION OF BLASTING OPERATIONS GENERALLY

Sec.		Sec.	
25-8-1.	Short title.	25-8-9.	Promulgation of rules and regulations by Commissioner; forms.
25-8-2.	Definitions.	25-8-10.	Approval by Commissioner of variations from requirements of chapter.
25-8-3.	Requirements governing use of explosives in blasting generally.	25-8-11.	Powers of Commissioner for enforcement of chapter, rules, and regulations generally; privileged nature of evidence submitted to Commissioner.
25-8-4.	Blasting standards; formulas and tables.	25-8-12.	Penalties for violations of chapter, rules, regulations, or orders.
25-8-5.	Use of seismograph measurements.		
25-8-6.	License requirement.		
25-8-7.	Refusal, suspension, or revocation of license.		
25-8-8.	Maintenance of blasting records.		

**Administrative rules and regulations.** — Regulations of blasting operations, generally, Official Compilation of Rules and Regulations of State of Georgia, Rules of Comptroller General, Safety Fire Department, Chapter 120-3-10.

JUDICIAL DECISIONS

**Punitive damages precluded by compliance with regulations.** — Punitive damages are, as a general rule, improper where a defendant has complied with environmental and safety regulations. Accordingly, the award of punitive damages against quarry operator who had adhered to the applicable laws was not supported by the evidence and warranted reversal. *Stone Man, Inc. v. Green*, 263 Ga. 470, 435 S.E.2d 205 (1993).

25-8-1. Short title.

This chapter shall be known and may be cited as the “Georgia Blasting Standards Act of 1978.” (Ga. L. 1978, p. 1624, § 1.)

25-8-2. Definitions.

As used in this chapter, the term:

- (1) “Blaster” means a person qualified by reason of training, knowledge, or experience to fire or detonate explosives in blasting operations and who has in his possession a valid blaster’s license issued by the Commissioner.
- (2) “Blasting operation” means the use of explosives in the blasting of stone, rock, ore, or any other natural formation or in any construction or demolition work but shall not include the use of explosives in agricultural operations and private and personal use of explosives in remote areas for such operations as ditching, land clearing, destruction of beaver dams

and other such operations when not in close proximity to adjacent property. This chapter shall not apply to any blasting operation in which the charge weight is 200 pounds or less.

(3) "Charge weight" means the total weight in pounds of an explosive charge.

(4) "Charge weight per delay" means the weight in pounds of an explosive charge which is detonated per delay period for delay intervals of eight milliseconds or greater or the total weight of explosives in pounds which is detonated within an interval less than eight milliseconds.

(5) "Commissioner" means the Safety Fire Commissioner.

(6) "Delay initiation" means the detonation of the subcharge of explosives in predetermined sequence which is accomplished by using regular or short period delay electric blasting caps or other means of equivalent effectiveness.

(7) "Delay period" means the time interval in milliseconds (eight milliseconds or greater) between successive detonations of subchargers produced by the delay devices used.

(8) "Distance" means the actual distance in feet along ground contour to the nearest house, public building, school, church, or commercial or institutional building normally occupied.

(9) "Explosives" means any chemical compound or other substance or mechanical system intended for the purpose of producing an explosion or containing oxidizing and combustible units or other ingredients in such proportions or quantities that ignition by fire, by friction, by concussion, by percussion, or by detonator may produce an explosion capable of causing injury to persons or damage to property.

(10) "Particle velocity" means the velocity with which an earth particle moves when vibrating or oscillating in any manner from its position of rest or elastic equilibrium.

(11) "Person" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, partnership, association, firm, trust, estate, or other entity whatsoever.

(12) "Scaled distance" or "Ds" means the actual distance (D) in feet divided by the square root of the maximum charge weight (W) in pounds that is detonated per delay period. This means:

$$D_s = \frac{D}{\sqrt{W}}$$



Scaled distance = 
$$\frac{\text{Actual distance}}{\sqrt{\text{charge weight per delay interval}}}$$

(Ga. L. 1978, p. 1624, § 2; Ga. L. 1982, p. 3, § 25.)

**25-8-3. Requirements governing use of explosives in blasting generally.**

(a) The use of explosives for the purpose of blasting in the neighborhood of any public highway, railroad, airport, dwelling house, public building, school, church, commercial or institutional building, or pipeline shall be done in accordance with this chapter and the rules and regulations promulgated by the Commissioner.

(b) In all blasting operations, except as otherwise provided in this chapter, the maximum particle velocity of any component of ground motion recorded on a three-component seismograph (where the components — transverse, vertical, and longitudinal — are arranged mutually perpendicular) shall not exceed two inches per second at the location of any dwelling house, public building, school, church, or commercial or institutional building normally occupied.

(c) Blasting operations without instrumentation will be considered as being within the limits set forth in this Code section if such blasting operations are conducted in accordance with subsection (d) of this Code section.

(d) Any blasting operation may be conducted without reference to any maximum amount or period provided by this Code section if the person in charge of the blasting operation demonstrates by instrumentation that maximum particle velocity of any component of the ground motion does not exceed the limits provided in subsection (b) of this Code section.

(e) Instrumentation for determining particle velocity of ground motion, as set forth in this chapter, shall be limited to devices that conform with design criteria for portable seismographs as found in the United States Bureau of Mines, RI-6487 and United States Bureau of Mines Bulletin 656. The instrument should have calibration traceable to the United States Bureau of Standards. The Commissioner or his duly authorized agent may enter upon premises for the purpose of observing any necessary instrumentation provided by this chapter.

(f) When blasting operations, other than those conducted at a fixed site as a part of any industry or business operated at the site, are to be conducted within close proximity to a known pipeline, the blaster or person in charge of the blasting operations shall take reasonable precautionary measures for the protection of the line and shall notify the owner of the line or his agent that the blastings are intended.



- (g) Blasting operations shall not be conducted within close proximity to any public highway unless reasonable precautionary measures are taken to safeguard the public.
- (h) When blasting operations are conducted at the immediate location of any dwelling house, public building, school, church, or commercial or institutional building which would result in ground vibrations having a particle velocity exceeding the limits provided by this chapter, such blasting operations may proceed after the receipt of written consent from the property owner or owners affected. (Ga. L. 1978, p. 1624, § 3.)

RESEARCH REFERENCES

**ALR.** — Duty of one blasting near a cut on embankment along a railroad right of way, 51 ALR 780.      Liability for property damage by concussion from blasting, 20 ALR2d 1372.

25-8-4. Blasting standards; formulas and tables.

- (a) In all blasting operations, except as otherwise provided in this chapter, the maximum peak particle velocity of any component of ground motion recorded on a three-component seismograph (where the components — transverse, vertical, and longitudinal — are arranged mutually perpendicular) shall not exceed two inches per second at the location of any dwelling house, public building, school, church, or commercial or institutional building normally occupied.
- (b) For blast-to-structure distance greater than 300 feet, the standard table for maximum charge per delay shall be generated by the formula:

$$W = \left( \frac{D}{50} \right)^2$$

where W is the weight of explosive in pounds and D is the distance in feet to the nearest dwelling house, public building, school, church, or commercial or institutional building normally occupied.

- (c) The following table may be used for determining the weight of explosives to be used with a single delay period:

STANDARD TABLE OF DISTANCE

Distance in Feet	Weight in Pounds	Distance in Feet	Weight in Pounds
0-10	1/8	21-25	3/4
11-15	1/4	26-30	1.00
16-20	1/2	40	2.25

Distance in Feet	Weight in Pounds	Distance in Feet	Weight in Pounds
50	3.50	600	144
60	4.75	700	196
70	6.00	800	256
80	7.25	900	324
90	8.50	1000	400
100	9.75	1100	484
110	11.0	1200	576
130	13.5	1300	676
150	16.0	1400	784
170	18.5	1500	900
190	21.0	1600	1024
210	23.5	1700	1156
230	26.0	1800	1296
250	28.5	1900	1444
270	31.0	2000	1600
290	33.5	2500	2500
300	34.75	3000	3600
350	49	3500	4900
400	64	4000	6400
500	100	4500	8100

(d) For nontabulated distances of over 300 feet, the following formula shall be used:

$$\text{Weight} = \left( \frac{\text{Distance}}{50} \right)^2$$

(Ga. L. 1978, p. 1624, § 4.)

#### 25-8-5. Use of seismograph measurements.

(a) Seismograph measurements may be used to increase the charge weight per delay period, provided that the velocity limit of two inches per second of any of the three mutually perpendicular components of ground motion is not exceeded.

(b) Seismograph measurements must be used in each individual blasting operation in which the standard table of distance is not being complied with. Notwithstanding the foregoing, a modified table for blasting operations may be established for use at a particular site, provided that the velocity limit of two inches per second of any of the three mutually perpendicular components of ground motion is not exceeded. Blasting operations without instrumentation will be considered as being within the

limits set forth in this subsection if, at a specified location on at least five blasts, instrumentation has shown that the maximum peak particle velocity of any of the three mutually perpendicular components of ground motion at the specified location is 50 percent or less than the limit set forth in this subsection, provided that on all future blasts the scaled distance is equal to or greater than the scaled distance for the instrumented blast.

(c) In estimating the maximum peak particle velocity at a particular position, the following formula shall be used:

$$V = V_o \left( \frac{D_o}{D} \right)^{1.5}$$

where  $V_o$  is the maximum ground particle velocity at the seismograph,  $D_o$  is the distance of the seismograph from the blasting, and  $D$  is the distance from the blasting to the position in question and in the same general direction. The distance  $D_o$  may not be greater than  $D$ , and  $D$  cannot be more than five times  $D_o$ . This determined velocity at the site of any dwelling house, public building, school, church, or commercial or institutional building normally occupied shall not exceed the two inches per second limit. (Ga. L. 1978, p. 1624, § 5.)

#### **25-8-6. License requirement.**

Every person engaged in any use of explosives regulated by this chapter shall be licensed in accordance with the provisions of Code Section 25-2-17. (Ga. L. 1978, p. 1624, § 6; Ga. L. 1994, p. 728, § 1.)

#### **RESEARCH REFERENCES**

**Am. Jur. 2d.** — 31 Am. Jur. 2d, Explosions and Explosives, § 2.      **C.J.S.** — 35 C.J.S., Explosives, § 29 et seq.

#### **25-8-7. Refusal, suspension, or revocation of license.**

Issuance of a license for the use of explosives may be refused or such a license which has been duly issued may be suspended or revoked or the renewal thereof refused by the Commissioner if the Commissioner finds that the applicant for or the holder of the license:

- (1) Has violated any provision of this chapter or of any other law of this state or any regulation duly promulgated by the Commissioner;
- (2) Has intentionally misrepresented or concealed any material fact in the application for the license or any document filed in support thereof;
- (3) Has permitted any person in his or her employ, either by direct instruction or by reasonable implication, to violate this chapter;

(4) Has been convicted of a felony by final judgment in any state or federal court;

(5) Has failed to comply with or has violated any proper order, rule, or regulation issued by the Commissioner; or

(6) Has otherwise shown a lack of trustworthiness or lack of competence to act as a blaster. (Ga. L. 1978, p. 1624, § 7; Ga. L. 1994, p. 728, § 2.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 51 Am. Jur. 2d, Licenses and Permits, §§ 89, 84.      **C.J.S.** — 53 C.J.S., Licenses, § 78 et seq.

#### **25-8-8. Maintenance of blasting records.**

(a) A record of each blast shall be kept. All records, including seismograph reports, shall be retained at least three years and shall be available for inspection.

(b) All records kept pursuant to subsection (a) of this Code section shall contain the following minimum data:

(1) The name of the company or contractor;

(2) The location, date, and time of the blast;

(3) The name, signature, and license number of the blaster in charge;

(4) The type of material blasted;

(5) The number of holes, burden, and spacing;

(6) The diameter and depth of holes;

(7) The types of explosives used (trade name);

(8) The total weight of explosives used;

(9) The maximum weight of explosives and maximum number of holes per delay interval of eight milliseconds or greater;

(10) The method of firing;

(11) The direction and distance in feet to the nearest dwelling house, public building, school, church, or commercial or institutional building normally occupied, neither owned nor leased by the person conducting the blasting;

(12) The weather conditions;

(13) The type and height or length of stemming;

(14) The type of delay blasting caps used and the delay periods used (trade name); and



(15) Whether or not mats or other forms of protection were used.

(c) The person taking the seismograph reading shall accurately indicate:

(1) The location of each seismograph used and its distance from the blast;

(2) The name of the person and firm, if any, analyzing the seismograph record;

(3) The name of the person operating the seismograph; and

(4) The exact location of blast relative to grid, station number, or permanent location.

(d) It shall be unlawful for any person to make a false entry in any record required to be kept pursuant to this Code section. (Ga. L. 1978, p. 1624, § 8.)

#### **25-8-9. Promulgation of rules and regulations by Commissioner; forms.**

The Commissioner may promulgate such rules and regulations, neither inconsistent nor contradictory with this chapter, as he deems necessary to effectuate this chapter. The Commissioner may also prescribe the forms required for the administration of this chapter. (Ga. L. 1978, p. 1624, § 9.)

#### **RESEARCH REFERENCES**

**Am. Jur. 2d.** — 31A Am. Jur. 2d, Explosions and Explosives, § 1 et seq.

**C.J.S.** — 35 C.J.S., Explosives, § 4 et seq.

#### **25-8-10. Approval by Commissioner of variations from requirements of chapter.**

The Commissioner may approve variations from the requirements of this chapter when he finds that an emergency exists and that the proposed variations from the specific requirements are necessary, will not hinder the effective administration of this chapter, and will not be contrary to any other applicable law, either state or federal. (Ga. L. 1978, p. 1624, § 10.)

#### **RESEARCH REFERENCES**

**Am. Jur. 2d.** — 2 Am. Jur. 2d, Administrative Law, § 294. 73 Am. Jur. 2d, Statutes, § 255.

**25-8-11. Powers of Commissioner for enforcement of chapter, rules, and regulations generally; privileged nature of evidence submitted to Commissioner.**

(a) Whenever it appears to the Commissioner, either upon investigation or otherwise, that any person has engaged in, is engaging in, or is about to engage in any act, practice, or transaction which is prohibited by this chapter or by any rule, regulation, or order of the Commissioner promulgated or issued pursuant to this chapter or which is declared to be unlawful under this chapter, the Commissioner, in his discretion and if he deems it to be appropriate in the public interest or for the protection of the citizens of this state, may issue an order prohibiting the person from continuing the act, practice, or transaction.

(b) Other powers granted to the Commissioner for the enforcement of this chapter include, but are not limited to, the following:

(1) The Commissioner may institute actions or other legal proceedings in any superior court of proper venue. Thereupon, the superior court, among other appropriate relief, may issue injunctions restraining persons and those acting in active concert with them from engaging in acts prohibited by the Commissioner in the enforcement of this chapter;

(2) In addition to any other penalties provided in this chapter, the Commissioner shall have authority to place a licensee on probation for a period of time not to exceed one year or to impose a monetary fine of up to \$1,000.00, or to do both, for each and every violation of this chapter or of the rules and regulations or orders of the Commissioner promulgated pursuant thereto; and

(3) The Commissioner or his designee shall have investigatorial powers and shall be empowered to subpoena witnesses and to examine them under oath.

(c) All testimony, documents, and other evidence required to be submitted to the Commissioner pursuant to this chapter shall be privileged. (Ga. L. 1978, p. 1624, § 11.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, §§ 223 et seq., 468.

**C.J.S.** — 67 C.J.S., Officers and Public Employees, § 224 et seq.

**ALR.** — Liability for property damage by

concussion from blasting, 20 ALR2d 1372.

Absolute liability for blasting operations as extending to injury or damage not directly caused by debris or concussion from explosion, 56 ALR3d 1017.

**25-8-12. Penalties for violations of chapter, rules, regulations, or orders.**

Any person who violates this chapter or any rule, regulation, or order promulgated by the Commissioner pursuant to this chapter shall be guilty

of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$500.00 and not more than \$1,000.00. (Ga. L. 1978, p. 1624, § 12.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 36 Am. Jur. 2d, Forfeitures and Penalties, § 1 et seq.

**C.J.S.** — 70 C.J.S., Penalties, § 1 et seq.

**ALR.** — Liability for property damage by concussion from blasting, 20 ALR2d 1372.

CHAPTER 9

BLASTING OR EXCAVATING NEAR UTILITY FACILITIES

Sec.		Sec.	
25-9-1.	Short title.		utility facility location information; effect of inaccurate information on liability of blaster or excavator; liability of facility owners for losses resulting from lack of accurate information.
25-9-2.	Purpose of chapter.	25-9-10.	Effect of chapter upon rights, titles, powers, or interests of facility owners or operators.
25-9-3.	Definitions.	25-9-11.	Effect of chapter upon rights, powers, etc., of state, counties, or municipalities concerning facilities located on public road or street rights of way.
25-9-4.	Design locate request and response.	25-9-12.	Notice requirements for emergency evacuations.
25-9-5.	Cooperation with utilities protection center; point of contact list.	25-9-13.	Penalties for violations of chapter.
25-9-6.	Prerequisites to blasting or excavating; marking of sites.		
25-9-7.	Determining whether utility facilities are present; information to utilities protection center; noncompliance; future utility facilities; abandoned utility facilities.		
25-9-8.	Treatment of gas pipes and other underground utility facilities by blasters and excavators.		
25-9-9.	Degree of accuracy required in		

**Cross references.** — Distribution, storage, and sale of gas generally, Ch. 4, T. 46.

**Administrative rules and regulations.** — Enforcement Procedures under the Georgia

Utility Facility Protection Act, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Public Service Commission, Chapter 515-9-4.

RESEARCH REFERENCES

**ALR.** — Liability of one excavating on private property for injury to public utility cables, conduits, or the like, 28 ALR5th 603.

25-9-1. Short title.

This chapter shall be known and may be cited as the “Georgia Utility Facility Protection Act.” (Code 1981, § 25-9-1, enacted by Ga. L. 2000, p. 780, § 1.)

**Editor’s notes.** — Ga. L. 2000, p. 780, § 1, effective July 1, 2000, renumbered former

Code Section 25-9-1 as present Code Section 25-9-2.

25-9-2. Purpose of chapter.

The purpose of this chapter is to protect the public from physical harm, prevent injury to persons and property, and prevent interruptions of utility service resulting from damage to utility facilities caused by blasting or



excavating operations by providing a method whereby the location of utility facilities will be made known to persons planning to engage in blasting or excavating operations so that such persons may observe proper precautions with respect to such utility facilities. (Ga. L. 1969, p. 50, § 1; Ga. L. 1986, p. 1069, § 1; Ga. L. 1990, p. 805, § 1; Code 1981, § 25-9-2, as redesignated by Ga. L. 2000, p. 780, § 1.)

**Editor’s notes.** — Ga. L. 2000, p. 780, § 1, Code Section 25-9-2 as present Code Section effective July 1, 2000, renumbered former 25-9-3.

OPINIONS OF THE ATTORNEY GENERAL

The provisions of Ga. L. 1969, p. 50 (see O.C.G.A. Title 25, Chapter 9) do not apply to the State Highway Department (now Department of Transportation). 1969 Op. Att’y Gen. No. 69-390.

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Pipelines, § 30, 31. C.J.S. — 58 C.J.S., Mines and Minerals, § 439 et seq.

25-9-3. Definitions.

As used in this chapter, the term:

- (1) “Abandoned utility facility” means a utility facility taken out of service by a facility owner or operator on or after January 1, 2001.
- (2) “Blasting” means any operation by which the level or grade of land is changed or by which earth, rock, buildings, structures, or other masses or materials are rended, torn, demolished, moved, or removed by the detonation of dynamite or any other explosive agent.
- (3) “Business days” means Monday through Friday, excluding the following holidays: New Year’s Day, Birthday of Dr. Martin Luther King, Jr., Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the following Friday, Christmas Eve, and Christmas Day. Any such holiday that falls on a Saturday shall be observed on the preceding Friday. Any such holiday that falls on a Sunday shall be observed on the following Monday.
- (4) “Business hours” means the time from 7:00 A.M. to 4:30 P.M. local time on business days.
- (5) “Commission” means the Public Service Commission.
- (6) “Corporation” means any corporation; municipal corporation; county; authority; joint-stock company; partnership; association; business trust; cooperative; organized group of persons, whether incorporated or not; or receiver or receivers or trustee or trustees of any of the foregoing.

(7) "Damage" means any impact or exposure that results in the need to repair a utility facility due to the weakening or the partial or complete destruction of the facility including, but not limited to, the protective coating, lateral support, cathodic protection, or the housing for the line, device, or facility.

(8) "Design locate request" means a communication to the utilities protection center in which a request for locating existing utility facilities for bidding, predesign, or advance planning purposes is made. A design locate request may not be used for excavation purposes.

(9) "Emergency" means a sudden or unforeseen occurrence involving a clear and imminent danger to life, health, or property; the interruption of utility services; or repairs to transportation facilities that require immediate action.

(10) "Emergency notice" means a communication to the utilities protection center to alert the involved facility owners or operators of the need to excavate due to an emergency that requires immediate excavation.

(11) "Excavating" means any operation by which the level or grade of land is changed or earth, rock, or other material below existing grade is moved and includes, without limitation, grading, trenching, digging, ditching, augering, scraping, directional boring, and pile driving. Such term, however, does not include routine road surface scraping maintenance. "Excavating" shall not mean routine roadway maintenance activities carried out by employees of the Georgia Department of Transportation acting within the scope of their employment, provided such activities occur entirely within the right of way of a public road, street, or highway of the state; are carried out with reasonable care so as to protect any utility facilities placed in the right of way by permit; are carried out within the limits of any original excavation on the traveled way, shoulders, or drainage features of a public road, street, or highway, and do not exceed 18 inches in depth below the grade existing prior to such activities; and, if involving the replacement of existing structures, replace such structures in their previous locations and at their previous depth.

(12) "Excavator" means any person engaged in excavating or blasting as defined in this Code section.

(13) "Extraordinary circumstances" means circumstances other than normal operating conditions which exist and make it impractical or impossible for a facility owner or operator to comply with the provisions of this chapter. Such extraordinary circumstances may include, but shall not be limited to, hurricanes, tornadoes, floods, ice and snow, and acts of God.

(14) "Facility owner or operator" means any person or entity who owns, operates, or controls the operation of a utility facility, as defined in this Code section, for the purpose of commercial enterprise.

(15) "Locate request" means a communication between an excavator and the utilities protection center in which a request for locating utility facilities is processed.

(16) "Mechanized excavating equipment" means all equipment which is powered by any motor, engine, or hydraulic or pneumatic device and which is used for excavating.

(17) "Person" means an individual, firm, joint venture, partnership, association, municipality, state, or other governmental unit, authority, department, agency, or a corporation and shall include any trustee, receiver, assignee, employee, agent, or personal representative thereof.

(18) "Service area" means a contiguous area or territory which encompasses the distribution system or network of utility facilities by means of which a facility owner or operator provides utility service.

(19) "Ticket Information Exchange System" means the automated information system to be installed and operated by the utilities protection center that will allow the excavator to determine locate ticket status from information provided by the facility owner or operator.

(20) "Tolerance zone" means the width of the utility facility plus 24 inches on either side of the outside edge of the utility facility on a horizontal plane.

(21) "Utilities protection center" or "center" means the corporation or other organization formed by facility owners or operators to provide a joint telephone number notification service for the purpose of receiving advance notification from persons planning to blast or excavate and distributing such notifications to its affected facility owner or operator members.

(22) "Utility facility" means an underground or submerged conductor, pipe, or structure used in providing electric or communications service, or an underground or submerged pipe used in carrying, providing, or gathering gas, oil or oil products, sewage, waste water, storm drainage, water or other liquids, and appurtenances thereto. This does not include utility facilities owned by a homeowner for service at the homeowner's residence. (Ga. L. 1969, p. 50, § 2; Ga. L. 1970, p. 226, §§ 1, 2; Ga. L. 1978, p. 1659, § 1; Ga. L. 1982, p. 1577, §§ 1, 2; Ga. L. 1986, p. 1069, § 1; Ga. L. 1990, p. 805, § 1; Ga. L. 1997, p. 515, § 1; Ga. L. 1998, p. 177, § 1; Code 1981, § 25-9-3, as redesignated by Ga. L. 2000, p. 780, § 1.)



**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2000, “do not exceed” was substituted for “does not exceed” in paragraph (11) and a comma was inserted following “utility facility” in paragraph (14).

**Editor’s notes.** — Former Code Section 25-9-3, concerning the requirement that utilities with gas pipes or underground facilities

file information with superior court clerks, was repealed and reserved by Ga. L. 1990, p. 805, § 1, effective April 4, 1990, and was based on Ga. L. 1969, p. 50, § 3; Ga. L. 1975, p. 417, § 1; Ga. L. 1981, Ex. Sess., p.8 (Code enactment Act); and Ga. L. 1986, p. 1069, § 1.

### OPINIONS OF THE ATTORNEY GENERAL

**The provisions of Ga. L. 1969, p. 50 (see O.C.G.A. Title 25, Chapter 9) do not apply to the State Highway Department (now De-**

**partment of Transportation).** 1969 Op. Att’y Gen. No. 69-390.

#### 25-9-4. Design locate request and response.

(a) Any person may submit a design locate request to the utilities protection center. Such design locate request shall:

(1) Describe the tract or parcel of land for which the design locate request has been submitted with sufficient particularity, as defined by policies developed and promulgated by the utilities protection center, to enable the facility owner or operator to ascertain the precise tract or parcel of land involved; and

(2) State the name, address, and telephone number of the person who has submitted the design locate request, as well as the name, address, and telephone number of any other person authorized to review any records subject to inspection as provided in paragraph (3) of subsection (b) of this Code section.

(b) Within ten working days after a design locate request has been submitted to the utilities protection center for a proposed project, the facility owner or operator shall respond by one of the following methods:

(1) Designate in accordance with Code Section 25-9-9 the location of all utility facilities within the area of the proposed excavation;

(2) Provide to the person submitting the design locate request the best available description of all utility facilities in the area of proposed excavation, which might include drawings of utility facilities already built in the area, or other facility records that are maintained by the facility owner or operator; or

(3) Allow the person submitting the design locate request or any other authorized person to inspect or copy the drawings or other records for all utility facilities within the proposed area of excavation. (Code 1981, § 25-9-4, enacted by Ga. L. 2000, p. 780, § 1.)



**Editor's notes.** — Ga. L. 2000, p. 780, § 1, Code Section 25-9-4 as present Code Section effective July 1, 2000, renumbered former 25-9-5, and enacted this Code section.

### **25-9-5. Cooperation with utilities protection center; point of contact list.**

(a) All facility owners or operators operating or maintaining utility facilities within the state shall participate as members in and cooperate with the utilities protection center. No duplicative center shall be established. The activities of the center shall be funded by all utilities.

(b) The utilities protection center shall maintain a list of the name, address, and telephone number of the office, department, or other source from or through which information respecting the location of utility facilities of its participating facility owners or operators may be obtained during business hours on business days. (Code 1981, § 25-9-4, enacted by Ga. L. 1986, p. 1069, § 1; Ga. L. 1990, p. 805, § 1; Code 1981, § 25-9-5, as redesignated by Ga. L. 2000, p. 780, § 1.)

**Editor's notes.** — Former Code Section 25-9-5, concerning duties of the superior court clerks and filing fees, was repealed and reserved by Ga. L. 1990, p. 805, § 1, effective April 4, 1990 and was based on Ga. L. 1969, p. 50, § 4; Ga. L. 1975, p. 417, § 2; Ga. L. 1981, p. 1396, § 16; Ga. L. 1981, Ex. Sess., p. 8 (Code enactment Act); § 25-9-5, as redesignated by Ga. L. 1986, p. 1069, § 1.

### **25-9-6. Prerequisites to blasting or excavating; marking of sites.**

(a) No person shall commence, perform, or engage in blasting or in excavating with mechanized excavating equipment on any tract or parcel of land in any county in this state unless and until the person planning the blasting or excavating has given 48 hours' notice by submitting a locate request to the utilities protection center, beginning the next business day after such notice is provided, excluding hours during days other than business days. Any locate request received by the utilities protection center after business hours shall be deemed to have been received by the utilities protection center the next business day. Such locate request shall:

(1) Describe the tract or parcel of land upon which the blasting or excavation is to take place with sufficient particularity, as defined by policies developed and promulgated by the utilities protection center, to enable the facility owner or operator to ascertain the precise tract or parcel of land involved;

(2) State the name, address, and telephone number of the person who will engage in the blasting or excavating;

(3) Describe the type of blasting or excavating to be engaged in by the person; and

(4) Designate the date upon which the blasting or excavating will commence.

(b) In the event the location upon which the blasting or excavating is to take place cannot be described with sufficient particularity to enable the facility owner or operator to ascertain the precise tract or parcel involved, the person proposing the blasting or excavating shall mark the route or boundary of the site of the proposed blasting or excavating by means of white paint, white stakes, or white flags if practical, or schedule an on-site meeting with the locator or facility owner and inform the utility protection center, within a reasonable time, of the results of such meeting.

(c) Except as otherwise provided in this subsection, notice given pursuant to subsection (a) of this Code section shall expire 21 calendar days following the date of such notice, and no blasting or excavating undertaken pursuant to this notice shall continue after such time has expired. In the event that the blasting or excavating which is the subject of the notice given pursuant to subsection (a) of this Code section will not be completed within 21 calendar days following the date of such notice, an additional notice must be given in accordance with subsection (a) of this Code section for the locate request to remain valid.

(d) Except for those persons submitting design locate requests, no person, including facility owners or operators, shall request marking of a site through the utilities protection center unless excavating is scheduled to commence. In addition, no person shall make repeated requests for re-marking, unless the repeated request is required for excavating to continue or due to circumstances not reasonably within the control of such person. Any person who willfully fails to comply with this subsection shall be strictly liable to the facility owner or operator for three times the cost of marking the utility facility, not to exceed \$1,000.00.

(e) If, subsequent to giving the notice to the utilities protection center required by subsection (a) of this Code section, a person planning excavating determines that such work will require blasting, then such person shall promptly so notify the utilities protection center and shall refrain from any blasting until the facility owner or operator responds within 24 hours, excluding hours during days other than business days, following receipt by the utilities protection center of such notice.

(f) When a locate request is made in accordance with subsection (a) of this Code section, excavators other than the person planning the blasting or excavating may conduct such activity, provided that the person planning the blasting or excavating shall remain responsible for ensuring that any stakes or other markings placed in accordance with this chapter remain in place and reasonably visible until such blasting or excavating is completed; and provided, further, that such blasting or excavating is:

- (1) Performed on the tract or parcel of land identified in the locate request;

- (2) Performed by a person authorized by and having a contractual relationship with the person planning the blasting or excavating;

(3) The type of blasting or excavating described in the locate request; and

(4) Carried out in accordance with all other requirements of this chapter. (Ga. L. 1969, p. 50, § 5; Ga. L. 1975, p. 417, § 3; Code 1981, § 25-9-5 [repealed]; Code 1981, § 25-9-6, as redesignated by Ga. L. 1986, p. 1069, § 1; Ga. L. 1990, p. 805, § 1; Ga. L. 2000, p. 780, § 1.)

**Editor's notes.** — This Code section formerly provided for a gas company's duties upon being notified of proposed blasting or excavating. Ga. L. 1986, p. 1069, § 1 in effect renumbered the former Code section as Code Section 25-9-7.

Ga. L. 1986, p. 1069, § 1 in effect renumbered former Code Section 25-9-5 as this Code section.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 31A Am. Jur. 2d, Explosions and Explosives, §§ 39, 40.

**C.J.S.** — 35 C.J.S., Explosives, § 29 et seq.

**ALR.** — Liability for property damage by concussion from blasting, 20 ALR2d 1372.

Liability of excavator for injury or damage resulting from explosion or fire caused by his damaging of gas mains and pipes, 53 ALR2d 1083.

Liability of gas company for damage resulting from failure to inspect or supervise work of contractors digging near gas pipes, 71 ALR3d 1174.

Liability of one excavating in highway for injury to public utility cables, conduits, or the like, 73 ALR3d 987.

### **25-9-7. Determining whether utility facilities are present; information to utilities protection center; noncompliance; future utility facilities; abandoned utility facilities.**

(a) Within 48 hours beginning the next business day after the business day following receipt by the utilities protection center of the locate request filed in accordance with Code Section 25-9-6, excluding hours during days other than business days, each facility owner or operator shall determine whether or not utility facilities are located on the tract or parcel of land upon which the excavating or blasting is to occur. If utility facilities are determined to be present, the facility owner or operator shall designate, through stakes or other marks on the surface of the tract or parcel of land, the location of utility facilities. In the event of extraordinary circumstances, the facility owner or operator shall notify the utilities protection center as provided in subsection (c) of this Code section. Such designation of the location of utility facilities through staking or marking shall be in accordance with the American Public Works Association (APWA) color code in place at the time the location of the utility facility is designated.

(b) Each facility owner or operator, either upon determining that no utility facility is present on the tract or parcel of land or upon completion of the designation of the location of any utility facilities on the tract or parcel of land as required by subsection (a) of this Code section, shall



provide this information to the utilities protection center in accordance with procedures developed by the utilities protection center, and which may include the use of the Ticket Information Exchange System. In no event shall such notice be provided later than midnight of the second business day following receipt by the utilities protection center of actual notice filed in accordance with Code Section 25-9-6.

(c) In the event the facility owner or operator is unable to designate the location of the utility facilities due to extraordinary circumstances, the facility owner or operator shall notify the utilities protection center and provide an estimated completion date in accordance with procedures developed by the utilities protection center, which may include the use of the Ticket Information Exchange System.

(d) If, at the end of the time period specified in subsection (a) of this Code section, any facility owner or operator has not complied with the requirements of subsections (a) and (b) of this Code section, the utilities protection center shall issue a second request to each such facility owner or operator. If the facility owner or operator does not respond to this additional request by 12:00 Noon of that business day, either by notifying the utilities protection center in accordance with procedures developed by the utilities protection center that no utility facilities are present on the tract or parcel of land, or by designating the location of such utility facilities, then the person providing notice pursuant to Code Section 25-9-6 may proceed with the excavating or blasting, provided there is no visible and obvious evidence of the presence of an unmarked utility facility on the tract or parcel of land. Such person shall not be subject to any liability resulting from damage to the utility facility as a result of the blasting or excavating, provided such person complies with the requirements of Code Section 25-9-8.

(e) All utility facilities installed by facility owners or operators on or after January 1, 2001, shall be installed in a manner which will make them locatable using a generally accepted electronic locating method by facility owners or operators.

(f) Facility owners or operators shall either maintain in a data base information concerning the location and other characteristics of abandoned utility facilities, maintain such abandoned utility facilities in a locatable manner, or remove such abandoned utility facilities. Facility owners or operators shall provide information on abandoned utility facilities, when possible, in response to a locate request or design locate request. When the presence of an abandoned facility within an excavation site is known, the facility owner or operator should attempt to locate and mark the abandoned facility or provide information to the excavator regarding such facilities. When located or exposed, all abandoned utility facilities shall be treated as live utility facilities. (Ga. L. 1969, p. 50, § 6; Ga. L. 1975, p. 417, § 4; Code 1981, § 25-9-6; Ga. L. 1986, p. 1069, § 1; Ga. L. 1990, p. 805, § 1; Ga. L. 2000, p. 780, § 1.)



**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2000, a comma was deleted following “abandoned facility” in the third sentence in subsection (f).

**Editor’s notes.** — This Code section formerly provided for treatment to be given gas pipes and facilities by persons undertaking

blasting or excavating. Ga. L. 1986, p. 1069, § 1 in effect renumbered the former Code section as Code Section 25-9-8.

Ga. L. 1986, p. 1069, § 1 in effect renumbered former Code Section 25-9-6 as this Code section.

### RESEARCH REFERENCES

**ALR.** — Liability of gas company for injury or damage due to defects in service lines on consumer’s premises, 26 ALR2d 136.

Liability of gas company for damage re-

sulting from failure to inspect or supervise work of contractors digging near gas pipes, 71 ALR3d 1174.

## 25-9-8. Treatment of gas pipes and other underground utility facilities by blasters and excavators.

(a) Persons engaged in blasting or in excavating with mechanized excavating equipment shall not strike, damage, injure, or loosen any utility facility which has been staked or marked in accordance with this chapter.

(b) When excavating or blasting is to take place within the tolerance zone, the excavator shall exercise such reasonable care as may be necessary for the protection of the utility facility. This protection shall include, but may not be limited to, hand digging, pot holing, soft digging, vacuum excavation methods, pneumatic hand tools, other mechanical methods with the approval of the facility owner or operator, or other generally accepted methods. For parallel type excavations, the existing facility shall be exposed at intervals as often as necessary to avoid damages.

(c) Any person engaged in blasting or in excavating with mechanized excavating equipment who strikes, damages, injures, or loosens any utility facility, regardless of whether the utility facility is marked, shall immediately cease such blasting or excavating and notify the utilities protection center and the appropriate facility owner or operator, if known. Upon receiving notice from the excavator or the utilities protection center, the facility owner or operator shall send personnel to the location as soon as possible to effect temporary or permanent repair of the damages. Until such time as the damage has been repaired, no person shall engage in excavating or blasting activities that may cause further damage to the utility facility except as provided in Code Section 25-9-12. (Ga. L. 1969, p. 50, § 7; Code 1981, § 25-9-7; Ga. L. 1986, p. 1069, § 1; Ga. L. 1990, p. 805, § 1; Ga. L. 2000, p. 780, § 1.)

**Editor’s notes.** — This Code section formerly provided for the degree of accuracy required of gas companies in providing pipe location and for the apportionment of liability for inaccurate information. Ga. L. 1986,

p. 1069, § 1 in effect renumbered the former Code section as Code Section 25-9-9.

Ga. L. 1986, p. 1069, § 1 in effect renumbered former Code Section 25-9-7 as this Code section.

## RESEARCH REFERENCES

**ALR.** — Liability of gas company for damage resulting from failure to inspect or supervise work of contractors digging near gas pipes, 71 ALR3d 1174.

Liability of one excavating in highway for injury to public utility cables, conduits, or the like, 73 ALR3d 987.

**25-9-9. Degree of accuracy required in utility facility location information; effect of inaccurate information on liability of blaster or excavator; liability of facility owners for losses resulting from lack of accurate information.**

(a) For the purposes of this chapter, information concerning the location of utility facilities which is provided by a facility owner or operator to any person must be accurate to within 24 inches measured horizontally from the outer edge of either side of such utility facilities. If any utility facility becomes damaged by an excavator due to the furnishing of inaccurate information as to its location by the facility owner or operator, such excavator shall not be subject to any liability resulting from damage to the utility facility as a result of the blasting or excavating provided such person complies with the requirements of Code Section 25-9-8 and there is no visible and obvious evidence to the excavator of the presence of a mismarked utility facility.

(b) Upon documented evidence that the person seeking information as to the location of utility facilities has incurred losses or expenses due to inaccurate information, lack of information, or unreasonable delays in supplying information by the facility owners or operators, the facility owners or operators shall be liable to that person for any such losses or expenses. (Ga. L. 1975, p. 417, § 5; Code 1981, § 25-9-8; Ga. L. 1986, p. 1069, § 1; Ga. L. 1990, p. 805, § 1; Ga. L. 2000, p. 780, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2000, “its” was substituted for “their” in the second sentence in subsection (a).

**Editor’s notes.** — This Code section formerly provided for the effect of this chapter on the rights, duties, etc. of gas companies.

Ga. L. 1986, p. 1069, § 1 in effect renumbered the former Code section as Code Section 25-9-10.

Ga. L. 1986, p. 1069, § 1 in effect renumbered former Code Section 25-9-9 as this Code section.

## RESEARCH REFERENCES

**ALR.** — Liability of gas company for damage resulting from failure to inspect or su-

pervise work of contractors digging near gas pipes, 71 ALR3d 1174.

**25-9-10. Effect of chapter upon rights, titles, powers, or interests of facility owners or operators.**

This chapter does not affect and is not intended to affect any right, title, power, or interest which any facility owner or operator may have with

relation to any utility facility or to any easement, right of way, license, permit, or other interest in or with respect to the land on which the utility facility is located. (Ga. L. 1969, p. 50, § 8; Code 1981, § 25-9-9; Ga. L. 1986, p. 1069, § 1; Ga. L. 1990, p. 805, § 1; Ga. L. 2000, p. 780, § 1.)

**Editor's notes.** — This Code section formerly provided for the effect of this chapter on local and state government rights, duties, etc. as to facilities on public right of ways. Ga. L. 1986, p. 1069, § 1 in effect renumbered

the former Code section as Code Section 25-9-11.

Ga. L. 1986, p. 1069, § 1 in effect renumbered former Code Section 25-9-9 as this Code section.

### RESEARCH REFERENCES

**ALR.** — Liability of gas company for injury or damage due to defects in service lines on consumer's premises, 26 ALR2d 136.

#### 25-9-11. Effect of chapter upon rights, powers, etc., of state, counties, or municipalities concerning facilities located on public road or street rights of way.

This chapter does not affect and is not intended to affect any rights, powers, interest, or liability of the state or the Department of Transportation with respect to the state highway system, the county road system, or the municipal street system, or of a county with respect to the county road system or of a municipality with respect to the city street system, with relation to any utility facility which is or may be installed within the limits of any public road or street right of way, whether the installation is by written or verbal permit, easement, or any form of agreement whatsoever. (Ga. L. 1978, p. 1659, § 4; Code 1981, § 25-9-10; Ga. L. 1986, p. 1069, § 1; Ga. L. 1990, p. 805, § 1; Ga. L. 2000, p. 780, § 1.)

**Editor's notes.** — This Code section formerly provided for the applicability of this chapter in the event of an emergency. Ga. L. 1986, p. 1069, § 1 in effect renumbered the former Code section as Code Section 25-9-12.

Ga. L. 1986, p. 1069, § 1 in effect renumbered former Code Section 25-9-10 as this Code section.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 25 Am. Jur. 2d, Easements and Licenses, §§ 85, 90, 96.

**C.J.S.** — 28A C.J.S., Easements, §§ 209, 210.

#### 25-9-12. Notice requirements for emergency evacuations.

The notice requirements provided by Code Section 25-9-6 shall not be required of persons performing emergency excavations or excavation in extraordinary circumstances; provided, however, any person who engages in an emergency excavation or excavation in extraordinary circumstances



shall take all reasonable precautions to avoid or minimize damage to any existing utility facilities; provided, further, any person who engages in an emergency excavation or excavation in extraordinary circumstances shall give notice of the emergency excavation as soon as practical to the utilities protection center. In giving such notice, such person must specifically identify the dangerous condition involved. If it is later determined by the commission that the excavation did not qualify as an emergency excavation, all liabilities and penalties will accrue as if no notice had been given. (Ga. L. 1970, p. 226, § 4; Code 1981, § 25-9-11; Ga. L. 1986, p. 1069, § 1; Ga. L. 1990, p. 805, § 1; Ga. L. 2000, p. 780, § 1.)

**Editor's notes.** — This Code section formerly provided for penalties for violations of this Code section. Ga. L. 1986, p. 1069, § 1 in effect repealed the former Code section and enacted Code Section 25-9-13 on the same subject, effective July 1, 1986. The former Code section was based on Ga. L.

1969, p. 50, § 9; Ga. L. 1970, p. 226, § 3; Ga. L. 1978, p. 1659, § 2; and Ga. L. 1981, Ex. Sess., p. 8 (Code enactment Act).

Ga. L. 1986, p. 1069, § 1 in effect renumbered former Code Section 25-9-11 as this Code section.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 31A Am. Jur. 2d, Explosions and Explosives, § 3.

#### 25-9-13. Penalties for violations of chapter.

(a) Any person who violates the requirements of Code Section 25-9-6 and whose subsequent excavating or blasting damages utility facilities shall be strictly liable for:

(1) Any cost incurred by the facility owner or operator in repairing or replacing its damaged facilities; and

(2) Any injury or damage to persons or property resulting from damaging the utility facilities.

(b) Any such person shall also indemnify the affected facility owner or operator against all claims, if any, for personal injury, property damage, or service interruptions resulting from damaging the utility facilities. Such obligation to indemnify shall not apply to any county, city, town, or state agency to the extent permitted by law.

(c) In addition to the other provisions of this Code section, a professional licensing board shall be authorized to suspend or revoke any professional or occupational license, certificate, or registration issued to a person pursuant to Title 43 whenever such person violates the requirements of Code Section 25-9-6 or 25-9-8.

(d) Subsections (a), (b), and (c) of this Code section shall not apply to any person who shall commence, perform, or engage in blasting or in



excavating with mechanized equipment on any tract or parcel of land in any county in this state if the facility owner or operator to which notice was given respecting such blasting or excavating with mechanized equipment as prescribed in subsection (a) of Code Section 25-9-6 has failed to comply with Code Section 25-9-7 or has failed to become a member of the utilities protection center as required by Code Section 25-9-5.

(e) The commission shall enforce the provisions of this chapter. The commission may promulgate any rules and regulations necessary to implement the commission's authority to enforce this chapter.

(f)(1) The commission shall create an advisory committee consisting of representatives of the following groups and agencies: facility owners or operators; utilities protection center; excavators; municipalities; counties; Georgia Department of Transportation; Governor's Office of Consumer Affairs; and underground line locators. The advisory committee shall consist of one representative from each of the above groups and agencies, with the exception of facility owners or operators and excavators, which groups shall each have two representatives on the advisory committee. The commission chairperson or such chairperson's representative shall also serve on the advisory committee. Persons appointed to the advisory committee shall have expertise with the subject matter encompassed by the provisions of this chapter.

(2) The advisory committee shall assist the commission in the enforcement of this chapter, and shall perform duties to be assigned by the commission including, but not limited to, the review of reported violations of this chapter, and the preparation of recommendations to the commission as to the appropriate penalties to impose on persons violating the provisions of this chapter.

(3) The members of the advisory committee shall be immune, individually and jointly, from civil liability for any act or omission done or made in the performance of their duties while serving as members of such advisory committee, but only in the absence of willful misconduct.

(g) The commission may, by judgment entered after a hearing on notice duly served on any person not less than 30 days before the date of the hearing, impose a civil penalty not exceeding \$10,000.00 for each violation, if it is proved that the person violated any of the provisions of this chapter, as a result of a failure to exercise reasonable care. Any proceeding or civil penalty undertaken pursuant to this Code section shall not prevent nor preempt the right of any party to obtain civil damages for personal injury or property damage in private causes of action. Except as otherwise provided by law, this subsection shall not authorize the commission to impose civil penalties on any county, city, town, or state agency. The commission shall inform the counties, cities, towns, or state agencies of reports of alleged violations involving the county, city, town, or state agency and, at the request

of the county, city, town, or state agency, suggest corrective action. The fine provided for in this subsection shall not be imposed on a person engaged in farming activities on land such person owns or leases.

(h) All civil penalties collected pursuant to this Code section shall be deposited in the general fund of the state treasury. (Code 1981, § 25-9-13, enacted by Ga. L. 1986, p. 1069, § 1; Ga. L. 1989, p. 495, § 1; Ga. L. 1990, p. 805, § 1; Ga. L. 2000, p. 780, § 1; Ga. L. 2000, p. 1706, § 19.)

<b>Code Commission notes.</b> — Pursuant to Code Section 28-9-5, in 2000, “facility owners” was substituted for “facility owner” in	the first sentence in paragraph (f)(1).
	<b>Editor’s notes.</b> — See the editor’s notes to Code Section 25-9-12.

RESEARCH REFERENCES

<b>Am. Jur. 2d.</b> — 36 Am. Jur. 2d, Forfeitures and Penalties, §§ 2, 8 et seq., 52 et seq.	<b>C.J.S.</b> — 70 C.J.S., Penalties, § 1 et seq.
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## CHAPTER 10

## REGULATION OF FIREWORKS

Sec.		Sec.	
25-10-1.	"Fireworks" defined.	25-10-4.1.	Employment of persons under age 18 in connection with fireworks storage or public displays.
25-10-2.	Prohibited fireworks activities.	25-10-5.	License and fee for manufacture, storage, and transportation of fireworks or pyrotechnic displays; promulgation of safety regulations; conduct of inspections.
25-10-3.	Permitted sales and uses of fireworks.	25-10-6.	Fireworks manufactured, sold, or stored in violation of chapter declared contraband; seizure and disposition thereof.
25-10-3.1.	Storage of fireworks by licensed nonmanufacturers.	25-10-7.	Applicability of provisions of chapter.
25-10-3.2.	License required for pyrotechnics exhibits; requirements; penalty for violations.	25-10-8.	Penalty for violations of chapter.
25-10-4.	Requirement of permit for conduct of fireworks display; application; imposition of conditions as to granting of permit; duration and transfer of permit; disposition of excess fireworks; fees.		

## RESEARCH REFERENCES

**ALR.** — Validity, construction, and application of state or local laws regulating the sale, possession, use, or transport of fireworks, 48 ALR5th 659.

## 25-10-1. "Fireworks" defined.

As used in this chapter, the term:

(1) "Fireworks" means any combustible or explosive composition or any substance or combination of substances or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, including blank cartridges, balloons requiring fire underneath to propel them, firecrackers, torpedos, sky-rockets, Roman candles, bombs, sparklers, and other combustibles and explosives of like construction, as well as articles containing any explosive or flammable compound and tablets and other devices containing an explosive substance. The term "fireworks" shall not include model rockets and model rocket engines, designed, sold, and used for the purpose of propelling recoverable aero models, toy pistol paper caps in which the explosive content does not average more than 0.25 grains of explosive mixture per paper cap nor toy pistols, toy cannons, toy canes, toy guns, or other devices using such paper caps; nor shall the term "fireworks" include ammunition consumed by weapons used for sporting and hunting purposes.

(2) "Proximate audience" means an audience closer to pyrotechnic devices than permitted by the National Fire Protection Association

Standard 1123, *Code for Fireworks Display*, as adopted by the Safety Fire Commissioner.

(3) "Pyrotechnics" means fireworks. (Ga. L. 1955, p. 550, § 2; Ga. L. 1962, p. 11, § 1; Ga. L. 1986, p. 798, § 1; Ga. L. 2003, p. 294, § 1.)

The 2003 amendment, effective May 28, 2003, substituted "the term: (1) 'Fireworks'" for "the term 'fireworks'" at the beginning and added paragraphs (2) and (3).

#### OPINIONS OF THE ATTORNEY GENERAL

**Explosives containing no more than 0.25 grains of explosive material.** — Party novelties and other explosive devices which are not paper caps but which contain no more than 0.25 grains of explosive material are considered "fireworks" within the meaning of O.C.G.A. § 25-10-1. 1983 Op. Att'y Gen. No. 83-78.

#### 25-10-2. Prohibited fireworks activities.

It shall be unlawful for any person, firm, corporation, association, or partnership to offer for sale at retail or wholesale, to use or explode or cause to be exploded, or to possess, manufacture, transport, or store any fireworks, except as otherwise provided in this chapter. (Ga. L. 1955, p. 550, § 3; Ga. L. 1962, p. 11, § 2; Ga. L. 1996, p. 945, § 1.)

#### JUDICIAL DECISIONS

**It is negligence per se to sell fireworks to a minor child**, under the circumstances not permitted by Ga. L. 1955, p. 550 (see O.C.G.A. § 25-10-2). *Allen v. Gornto*, 100 Ga. App. 744, 112 S.E.2d 368 (1959).

**The exclusion of coverage in a homeowner's insurance policy for acts of the** insured that violate any criminal law or statute excluded injuries caused by the illegal possession of firecrackers. *Horace Mann Ins. Co. v. Drury*, 213 Ga. App. 321, 445 S.E.2d 272 (1994).

Cited in *Barlow v. Lord*, 112 Ga. App. 352, 145 S.E.2d 272 (1965).

#### OPINIONS OF THE ATTORNEY GENERAL

**Activities constituting violation of O.C.G.A. § 25-10-2.** — Where fireworks are shipped to a buyer in the port area, stored in private warehouses, and then distributed and sold from this particular location, such activity constitutes a violation of Ga. L. 1955, p. 550 (see O.C.G.A. § 25-10-2). 1968 Op. Att'y Gen. No. 68-82.

Where fireworks are stored in a bonded warehouse in this state temporarily, and then transported to other states where legalized, there is a violation of Ga. L. 1955, p. 550 (see O.C.G.A. § 25-10-2). 1968 Op. Att'y Gen. No. 68-82.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 31A Am. Jur. 2d, Explosions and Explosives, § 1 et seq.

**C.J.S.** — 35 C.J.S., Explosives, § 2 et seq.



**25-10-3. Permitted sales and uses of fireworks.**

Nothing in this chapter shall be construed to prohibit the following:

(1) The wholesale or retail sale of fireworks for use in a public exhibition or public display and the transportation of fireworks for such use, provided that any person selling at wholesale or retail or transporting fireworks for such use must have a duplicate copy of the permit which has been issued by the judge of the probate court to a person, firm, corporation, association, or partnership which has been authorized to hold a public exhibition or display, and provided, further, that the seller maintains and makes available for inspection by the Safety Fire Commissioner or the designee thereof the record of any such fireworks sale for a period of 18 months from the date of sale;

(2) Use by railroads or other transportation agencies of fireworks specifically designed and intended for signal purposes or illumination;

(3) The sale or use of blank cartridges for a show or theater or for signal or ceremonial purposes in athletic or sports events or for use by military or police organizations; or

(4) The manufacture of any fireworks not prohibited by Congress or any federal agency; the possession, transportation, and storage of any such fireworks by any manufacturer thereof; the storage of certain such fireworks by a nonmanufacturer in accordance with the provisions of Code Section 25-10-3.1; the possession, transportation, or distribution of any such fireworks to a distributor located outside this state; the sale of such fireworks by any such manufacturer to a distributor located outside this state; or the possession and transportation of such fireworks by any manufacturer or contractor or common carrier from the point of manufacture within this state to any point outside this state. (Ga. L. 1955, p. 550, § 5; Ga. L. 1962, p. 11, § 4; Ga. L. 1969, p. 1144, § 1; Ga. L. 1996, p. 945, § 2.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 31A Am. Jur. 2d, Explosions and Explosives, § 1 et seq.      **C.J.S.** — 35 C.J.S., Explosives, § 2 et seq.

**25-10-3.1. Storage of fireworks by licensed nonmanufacturers.**

(a) Fireworks defined as Class B explosives or the equivalent thereof by regulations of the United States Department of Transportation set forth in Part 173 of Title 49 of the Code of Federal Regulations and which are to be used only for purposes of a public exhibition or display pursuant to Code Section 25-10-4 may be stored by a person, firm, or corporation, other than a manufacturer, pursuant to a magazine license issued by the Safety Fire Commissioner in accordance with the provisions of this Code section. Any

application for such a license shall be made to the Safety Fire Commissioner in a form to be prescribed by the Commissioner. The application shall include a letter of acknowledgment and endorsement from the local authority having responsibility for fire suppression.

(b) Any application for a magazine license made pursuant to subsection (a) of this Code section shall be accompanied by plans for the magazine proposed to be used for storage of Class B explosives or the equivalent thereof, in such detail and in such number of copies as required by the Safety Fire Commissioner. Construction of a magazine for storage of fireworks pursuant to this Code section shall not commence until the plans therefor have been approved by the state fire marshal and returned to the applicant.

(c) No license shall be issued pursuant to this Code section unless:

(1) The applicant currently holds a valid license or permit to receive explosive materials including Class B explosives or the equivalent thereof issued pursuant to regulations of the Bureau of Alcohol, Tobacco, and Firearms of the United States Department of the Treasury;

(2) The applicant presents a copy of a valid permit for a public exhibition or display of fireworks issued pursuant to Code Section 25-10-4;

(3) The state fire marshal or the designee thereof has determined upon inspection that the constructed magazine meets or exceeds the requirements for magazines to be used for storing Class B explosives or the equivalent thereof as established by regulations and adopted codes and standards of the Safety Fire Commissioner; and

(4) The state fire marshal or the designee thereof has determined upon inspection that the constructed magazine meets or exceeds any additional requirements applicable to magazines to be used for storage of Class B explosives or the equivalent thereof by nonmanufacturers as may be established by regulation promulgated pursuant to Code Section 25-10-5.

(d) Any license issued pursuant to this Code section shall be subject to the annual license fee and expiration date provisions of Code Section 25-10-5. The initial annual fee for a magazine license shall be submitted along with the application for such license.

(e) Any fireworks stored under any magazine license issued pursuant to this Code section shall be stored in an approved magazine and in accordance with the regulations for storing Class B explosives or the equivalent thereof as established by regulations of the Safety Fire Commissioner and any additional requirements for storage of such explosives by nonmanufacturers as may be established by regulation promulgated pursuant to Code Section 25-10-5, for a period of time not to exceed 60 days

before and 60 days after the permitted date of a public exhibition or display of fireworks pursuant to Code Section 25-10-4.

(f) Any violation of the provisions of this Code section shall be grounds for revoking a magazine license. (Code 1981, § 25-10-3.1, enacted by Ga. L. 1996, p. 945, § 3.)

**25-10-3.2. License required for pyrotechnics exhibits; requirements; penalty for violations.**

(a) No person, firm, corporation, association, or partnership shall cause the combustion, explosion, deflagration, or detonation of pyrotechnics for the purpose of a public exhibition or display before a proximate audience unless such person, firm, corporation, association, or partnership holds a valid license issued by the Safety Fire Commissioner in accordance with the provisions of this Code section. Any application for such a license shall be made to the Safety Fire Commissioner in the form prescribed by the Safety Fire Commissioner.

(b) All applicants must meet the following requirements for licensure:

(1) The applicant shall submit to the Safety Fire Commissioner proof of a valid comprehensive liability insurance policy purchased from an insurer authorized to do business in Georgia. The coverage must include bodily injury and property damage, products liability, completed operations, and contractual liability. The proof of insurance must also be provided before any license can be renewed. The minimum amount of said coverage shall be \$1 million or such other amount as specified by the Safety Fire Commissioner. An insurer that provided such coverage shall notify the Safety Fire Commissioner of any change in coverage;

(2) The applicant shall pay the required licensing fee as prescribed in Code Section 25-10-5; and

(3) The applicant shall comply with all rules and regulations promulgated by the Safety Fire Commissioner pursuant to this chapter.

(c) Any violation of this chapter shall be grounds for revocation or denial of licensure to conduct pyrotechnic displays. (Code 1981, § 25-10-3.2, enacted by Ga. L. 2003, p. 294, § 2.)

**Effective date.** — This Code section became effective May 28, 2003.

**25-10-4. Requirement of permit for conduct of fireworks display; application; imposition of conditions as to granting of permit; duration and transfer of permit; disposition of excess fireworks; fees.**

(a) Any person, firm, corporation, association, or partnership desiring to conduct a public exhibition or display of fireworks not before a proximate



audience shall first obtain a permit from the judge of the probate court of the county in which the public exhibition or display is to be held. Application for a permit must be made in writing and filed with the judge not less than ten days prior to the date of the proposed public exhibition or display of fireworks. Fireworks distributors located outside this state shall obtain display permit application forms and provide the same to applicants upon request. The judge may grant a permit for the display on the following conditions:

(1) That the display be conducted by a competent operator approved by the judge;

(2) That the display shall be of such character as in the opinion of the judge will not be hazardous to persons or property;

(3) That the local fire official responsible for the area in question certifies in writing that the site for the display meets his or her approval and is in compliance with all applicable codes; and

(4) That the application be accompanied by a bond in the principal sum of \$10,000.00, payable to the county in which the display is being held and conditioned for the payment of damages which may be caused either to persons or to property by reason of the display or, alternatively, that the application be accompanied by evidence that the applicant carries proper liability insurance for bodily injury in the amount of not less than \$25,000.00 for each person and \$50,000.00 for each accident and for property damage in the amount of not less than \$25,000.00 for each accident and \$50,000.00 aggregate, with an insurance company duly licensed by the Commissioner of Insurance.

(b) Any person, firm, corporation, association, or partnership desiring to conduct a public exhibition or display of fireworks before a proximate audience shall first obtain a permit from the judge of the probate court of the county in which the public exhibition or display is to be held. Application for a permit must be made in writing and filed with the judge not less than ten days prior to the date of the proposed public exhibition or display of fireworks. Such application must contain the license number issued by the Safety Fire Commissioner for the person, firm, corporation, association, or partnership that will cause the combustion, explosion, deflagration, or detonation of pyrotechnics at the public exhibition or display. Fireworks distributors located outside this state shall obtain display permit application forms and provide the same to applicants upon request. The judge may grant a permit for the display on the following conditions:

(1) That the display be conducted by a competent operator approved by the judge;

(2) That the display shall be of such character as in the opinion of the judge will not be hazardous to persons or property;



(3) That the local fire official responsible for the area in question certifies in writing that the site for the display meets his or her approval and is in compliance with all applicable codes; and

(4) That the application be accompanied by a bond in the principal sum of \$10,000.00, payable to the county in which the display is being held and conditioned for the payment of damages that may be caused either to persons or to property by reason of the display or, alternatively, that the application be accompanied by evidence that the applicant carries property liability insurance for bodily injury in the amount of not less than \$25,000.00 for each person and \$50,000.00 for each accident and for property damage in the amount of not less than \$25,000.00 for each accident and \$50,000.00 aggregate, with an insurance company duly licensed by the Commissioner of Insurance.

(c) No permit, as provided for in subsections (a) and (b) of this Code section, shall be granted unless the applicant has met all the requirements of and is in full compliance with the rules and regulations promulgated by the Safety Fire Commissioner pursuant to this chapter.

(d) The permit provided for in subsection (a) or (b) of this Code section shall be limited to the time specified therein, such time not to exceed a two-week period. The permit shall not be transferable. In the event any fireworks bought and possessed under this Code section are not used by the licensee or in the event that there is a surplus or excess after the two-week period expires, it shall be the duty of the licensee to return such fireworks to a facility approved in accordance with Code Section 25-10-3.1 and the rules and regulations promulgated by the Safety Fire Commissioner. Fireworks stored in accordance with Code Section 25-10-3.1 and regulations shall not be deemed contraband and shall not be subject to seizure.

(e) The judge of the probate court shall receive \$10.00 for his or her services in granting or refusing the original permit and \$1.00 for each copy issued, to be paid by the applicant. The judge of the probate court shall provide the Safety Fire Commissioner a copy of each permit granted prior to the proposed date of the public exhibition or display. (Ga. L. 1955, p. 550, §§ 3, 4; Ga. L. 1962, p. 11, § 3; Ga. L. 1994, p. 317, § 1; Ga. L. 1996, p. 945, § 4; Ga. L. 2003, p. 294, § 3.)

**The 2003 amendment**, effective May 28, 2003, in subsection (a), inserted “not before a proximate audience” in the first sentence, inserted “public” twice in the introductory paragraph, deleted “and” from the end of paragraph (a)(2), added paragraph (a)(3), and redesignated former paragraph (a)(3) as present paragraph (a)(4); added subsections (b) and (c); redesignated former subsections (b) and (c) as present subsections

(d) and (e), respectively; inserted “or (b)” in the first sentence of present subsection (d); and added the last sentence in subsection (e).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1995, in paragraph (a)(3), “Commissioner of Insurance” was substituted for “Insurance Commissioner” at the end.

**JUDICIAL DECISIONS**

**Restricting manufacturing, selling, and use of fireworks not unconstitutional.** — Ga. L. 1955, p. 550 (see O.C.G.A. § 25-10-4) restricting the manufacture, sale, and use of fireworks, does not violate the commerce clause of the federal Constitution, nor is it

unconstitutional for the reason that Congress has preempted the regulation of fireworks by federal legislation. *Dixie Fireworks Co. v. McArthur*, 218 Ga. 735, 130 S.E.2d 731 (1963).

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 31A Am. Jur. 2d, Explosions and Explosives, §§ 1 et seq., 101 et seq. 51 Am. Jur. 2d, Licenses and Permits, §§ 63, 80 et seq.

**C.J.S.** — 35 C.J.S., Explosives, §§ 2, 3. 53 C.J.S., Licenses, § 37 et seq.

**ALR.** — Bond conditioned for payment of

damages for injury to person or damage to property, given as condition of permission by public for fireworks display or other exhibition or entertainment, as covering non-negligent injury or damage, 138 ALR 936.

**25-10-4.1. Employment of persons under age 18 in connection with fireworks storage or public displays.**

No person under the age of 18 shall be employed to work at any magazine, or at any facility containing a magazine, wherein fireworks are stored or to work in any public exhibition or display of fireworks. (Code 1981, § 25-10-4.1, enacted by Ga. L. 1996, p. 945, § 5.)

**25-10-5. License and fee for manufacture, storage, and transportation of fireworks or pyrotechnic displays; promulgation of safety regulations; conduct of inspections.**

The annual license fee for any person, firm, or corporation conducting business in this state under paragraph (4) of Code Section 25-10-3 or storing fireworks under Code Section 25-10-3.1 or conducting pyrotechnic displays under Code Section 25-10-3.2 shall be \$1,000.00 per year, payable to the Safety Fire Commissioner. The license shall expire on December 31 of each year. The Safety Fire Commissioner is authorized and directed to promulgate safety regulations relating to the manufacture, storage, and transportation of fireworks within this state in order to ensure the adequate protection of the employees of any such person, firm, or corporation and of the general public. The Safety Fire Commissioner is also authorized and directed to promulgate safety regulations relating to the public exhibition or display of pyrotechnics and the licensing requirements of those conducting such public exhibitions or displays, as he or she deems necessary. The Safety Fire Commissioner is further authorized and directed to conduct periodic inspections of the facilities of any person, firm, or corporation manufacturing, storing, and transporting fireworks as provided in paragraph (4) of Code Section 25-10-3 or as provided in Code Section 25-10-3.1 in order to ensure compliance with fire safety rules and regulations. (Ga. L.

1969, p. 1144, § 2; Ga. L. 1986, p. 798, § 2; Ga. L. 1996, p. 945, § 6; Ga. L. 2003, p. 294, § 4.)

The 2003 amendment, effective May 28, 2003, inserted “or conducting pyrotechnic displays under Code Section 25-10-3.2” in the middle of the first sentence and added the fourth sentence.

**25-10-6. Fireworks manufactured, sold, or stored in violation of chapter declared contraband; seizure and disposition thereof.**

All fireworks manufactured, offered for sale, exposed for sale, or stored in violation of this chapter are declared to be contraband and may be seized, taken, and removed, or caused to be removed and destroyed at the expense of the owner thereof by the state fire marshal, the Georgia State Patrol, or any sheriff or local police official. (Ga. L. 1955, p. 550, § 6; Ga. L. 1962, p. 11, § 5.)

**OPINIONS OF THE ATTORNEY GENERAL**

**Enforcement of fireworks regulations by Georgia State Patrol.** — The Georgia State Patrol may seize fireworks which they find, declare them contraband, and destroy them even though found off the highways of this state, but any arrest made off the highways would have to be accomplished by the local authorities; however, any violation of the terms of Ga. L. 1955, p. 550 (see O.C.G.A. Title 25, Chapter 10) observed on the highways may give rise to proper arrest by the members of the state patrol. 1962 Op. Att’y Gen. p. 431.

**RESEARCH REFERENCES**

**ALR.** — Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding, 8 ALR3d 473.

**25-10-7. Applicability of provisions of chapter.**

This chapter shall not apply to the high explosives covered by Code Section 25-2-17 over which the Safety Fire Commissioner has regulatory control. (Ga. L. 1955, p. 550, § 8; Ga. L. 1962, p. 11, § 8; Ga. L. 1982, p. 3, § 25.)

**25-10-8. Penalty for violations of chapter.**

(a) Any person, firm, corporation, association, or partnership that violates Code Section 25-10-3.2 shall be guilty of a felony and shall be punished by imprisonment for not less than two nor more than ten years, or by a fine of not more than \$10,000.00, or both.

(b) Any person, firm, corporation, association, or partnership that violates any other provision of this chapter shall be guilty of a misdemeanor. (Ga. L. 1955, p. 550, § 7; Ga. L. 1962, p. 11, § 6; Ga. L. 2003, p. 294, § 5.)

**The 2003 amendment**, effective May 28, 2003, added subsection (a); designated the existing provisions as subsection (b); and substituted “that violates any other provision of” for “who or which violates” in present subsection (b).



CHAPTER 11

FIRE PROTECTION SPRINKLER CONTRACTORS

Sec.		Sec.	
25-11-1.	Short title.	25-11-12.	Rules and regulations; forms.
25-11-2.	Definitions.	25-11-13.	Valid license required for installation or repair of water-based fire protection sprinkler systems; proof of contractor's competency required; effect of chapter on laws regulating contractors' work.
25-11-3.	Powers and duties of the Commissioner; delegation of authority.	25-11-14.	Applicability to work performed for state or political subdivision; contract and bid requirements for such work.
25-11-4.	Application to become certificate holder; certificate fee; demonstration of applicant's competence and knowledge; limitations on issuance of certificate; expiration and renewal of certificate.	25-11-15.	Deposit of fees collected under chapter; authority to accept grants for administration of chapter.
25-11-5.	Licensing of each location; application; fee; prerequisites.	25-11-16.	Cease and desist order against violators; penalty for violations; order requiring compliance; revocation of certificate for failure to comply with order.
25-11-6.	Inspector's license.	25-11-17.	Additional grounds for revocation or suspension of licenses.
25-11-7.	Fire protection system designer license.	25-11-18.	Failure to renew certificate or license.
25-11-8.	Requirement that installation, repair, or other work be performed or supervised by certificate holder.	25-11-19.	Systems exempt from chapter.
25-11-9.	Review of water-based fire protection shop drawings.		
25-11-10.	Preparation of water-based fire protection system documents for construction by designers.		
25-11-11.	Individuals authorized to inspect and maintain systems.		

RESEARCH REFERENCES

**ALR.** — Liability of person furnishing, installing, or servicing burglary or fire alarm system for burglary or fire loss, 37 ALR4th 47.

25-11-1. Short title.

This chapter shall be known and may be cited as the “Georgia Fire Sprinkler Act.” (Code 1981, § 25-11-1, enacted by Ga. L. 1982, p. 1212, § 1; Ga. L. 1997, p. 1698, § 1; Ga. L. 1998, p. 128, § 25.)

25-11-2. Definitions.

As used in this chapter, the term:

(1) “Certificate” or “certificate of competency” means the document issued by the Commissioner to a certificate holder who has demonstrated

adequate technical knowledge and ability to design in accordance with recognized standards as adopted by the Commissioner and to perform and supervise the installation, repair, alteration, addition, maintenance, or inspection of water-based fire protection systems.

(2) “Certificate holder” means an individual who has been issued a certificate of competency by the Commissioner.

(3) “Commissioner” means the Georgia Safety Fire Commissioner.

(4) “Fire protection sprinkler contractor” means an individual, partnership, corporation, association, or joint venture that supervises, performs, or supervises and performs the installation, repair, alteration, addition, maintenance, or inspection of water-based fire protection systems. Such term does not include local building officials, fire inspectors, or insurance inspectors when acting in their official capacities.

(5) “Fire protection sprinkler contractor license” means the document issued by the Commissioner to the fire protection sprinkler contractor which authorizes the fire protection sprinkler contractor to engage in the business of fabrication, installation, repair, alteration, maintenance, or inspection of water-based fire protection systems.

(6) “Fire protection sprinkler system” means an integrated system of overhead and underground piping designed in accordance with fire protection engineering standards. The installation includes one or more automatic water supplies. The portion of the system aboveground is a network of specially sized or hydraulically designed piping installed in a building, structure, or area, generally overhead, to which sprinklers are attached in a systematic pattern. The valve controlling each system riser is located in the system riser or its supply piping. The system is usually activated by heat from a fire and discharges water over the fire area.

(7) “Fire protection system designer” means a person who develops documents pertaining to water-based fire protection systems.

(8) “Fire protection system designer license” means a document issued by the Commissioner which authorizes the fire protection system designer to engage in the business of producing construction shop drawings pertaining to water-based fire protection systems.

(9) “Fire protection system inspector” means an individual who performs inspections only on water-based fire protection systems in accordance with applicable codes and standards as adopted by the Commissioner. Such term does not apply to state, local, and insurance inspectors while acting in their official capacities.

(10) “Fire protection system inspector’s license” means a document issued by the Commissioner which authorizes the fire protection system inspector to engage in the business of inspecting water-based fire protection systems.

(11) "Fire pump" means a pump supplying water at the flow and pressure required by water-based fire protection systems.

(12) "Foam-water spray system" means a special system pipe connected to a source of foam concentrate and to a water supply and equipped with foam-water spray nozzles for fire protection agent discharge (foam and water sequentially in that order or in reverse order) and distribution over the area to be protected. System operation arrangements parallel those for foam-water sprinkler systems.

(13) "Foam-water sprinkler system" means a special system pipe connected to a source of foam concentrates and to a water supply and equipped with appropriate discharge devices for fire protection agent discharge and distribution over the area to be protected. The piping system is connected to the water supply through a control valve that is usually actuated by operation of automatic detection equipment installed in the same area as the sprinklers. When this valve opens, water flows into the piping system, and foam concentrate is injected into the water. The resulting foam solution discharging through the discharge devices generates and distributes foam. Upon exhaustion of the foam concentrate supply, water discharge will follow the foam and continue until manually shut off. Existing deluge sprinkler systems that have been converted to the use of aqueous film forming foam are classified as foam-water sprinkler systems.

(14) "Inspection" means a visual examination of a water-based fire protection system or portion thereof to verify that it appears to be in operating condition and is free of physical damage.

(15) "Maintenance" means work performed to keep equipment operable or to make repairs without altering the operation of the water-based system.

(16) "Private fire service main" means that pipe and its appurtenances on private property that are:

(A) Between a source of water and the base of the system riser for water-based fire protection systems;

(B) Between a source of water and inlets to foam-making systems;

(C) Between a source of water and the base elbow of private hydrants or monitor nozzles;

(D) Used as fire pump suction and discharge piping outside of a building; and

(E) Beginning at the inlet side of the check valve on a gravity or pressure tank.

(17) "Private water tank" means a tank supplying water for water-based fire protection systems which is located on private property.



(18) “Standpipe system” means an arrangement of piping, valves, hose connections, and allied equipment installed in a building or structure with the hose connections located in such a manner that water can be discharged in streams or spray patterns through attached hoses and nozzles for the purpose of extinguishing a fire, thus protecting a building or structure, its contents, and its occupants. This is accomplished by connection to water supply systems or by pumps, tanks, and other equipment necessary to provide an adequate supply of water-to-hose connections.

(19) “Testing” means a procedure to determine the status of a system as intended by conducting periodic physical checks on water-based fire protection systems such as waterflow tests, fire pump tests, alarm tests, and trip tests of dry pipe, deluge, or preaction valves. These tests follow up on the original acceptance test at intervals specified in the appropriate standards related to such systems.

(20) “Water-based fire protection system” means any one system or any combination of a number of systems designed to deliver water to an apparatus designed to extinguish or retard the advancement of fire. Such systems include fire protection sprinkler systems, standpipe systems, private fire service mains, fire pumps, private water tanks, water spray fixed systems, foam-water spray systems, and foam-water sprinkler systems. The term “fire sprinkler system” is used interchangeably with this term.

(21) “Water-spray fixed system” means a special fixed pipe system connected to a reliable fire protection water supply and equipped with water-spray nozzles for specific water discharge and distribution over the surface or area to be protected. The piping system is connected to the water supply through an automatically or manually activated valve that initiates the flow of water. An automatic valve is actuated by operation of automatic detection equipment installed in the same area as the water-spray nozzles. (Code 1981, § 25-11-2, enacted by Ga. L. 1982, p. 1212, § 1; Ga. L. 1989, p. 1124, § 1; Ga. L. 1997, p. 1698, § 1.)

### **25-11-3. Powers and duties of the Commissioner; delegation of authority.**

(a) The Commissioner is charged with the duty and responsibility for the enforcement of this chapter.

(b) Any authority, power, or duty vested in the Commissioner by any provision of this chapter may be exercised, discharged, or performed by any deputy, assistant, or other designated employee acting in the Commissioner’s name and by his or her delegated authority.

(c) The Commissioner may, at his or her discretion, have the competency and license test prepared by others.

(d) The Commissioner is authorized to enter into a reciprocal agreement with the state fire commissioner or state fire marshal of other states for



the waiver of the competency test of any applicant resident in such other jurisdiction, provided that:

(1) The laws of the other jurisdiction are substantially similar to this chapter; and

(2) The applicant has no place of business within this state nor is an officer, director, stockholder, or partner in any corporation or partnership doing business in this jurisdiction as a fire protection sprinkler contractor. (Code 1981, § 25-11-3, enacted by Ga. L. 1982, p. 1212, § 1; Ga. L. 1984, p. 824, § 1; Ga. L. 1997, p. 1698, § 1.)

**Code Commission notes.** — Pursuant to Fire Commissioner” in the introductory language of subsection (d).  
Code Section 28-9-5, in 1997, “state fire commissioner” was substituted for “State

**25-11-4. Application to become certificate holder; certificate fee; demonstration of applicant’s competence and knowledge; limitations on issuance of certificate; expiration and renewal of certificate.**

(a) Any individual desiring to become a certificate holder shall submit to the Commissioner a completed application on forms prescribed by the Commissioner. Such individual shall remit with his or her application a nonrefundable certificate fee of \$100.00 plus a one-time filing fee of \$50.00. Such fee shall not be prorated for portions of a year.

(b) Prior to obtaining a certificate, the applicant shall demonstrate his or her competence and knowledge of water-based fire protection systems by:

(1) Successfully completing a competency test by means prescribed by rules and regulations as adopted and promulgated by the Commissioner; or

(2) Submitting to the Commissioner a certification from either the state fire commissioner or state fire marshal of another jurisdiction whenever a reciprocal agreement has been entered into between the two jurisdictions pursuant to the provisions of this chapter.

(c)(1) If the applicant has paid the required fees and has met one of the requirements of subsection (b) of this Code section, the Commissioner shall issue a certificate of competency in the name of the applicant, unless such applicant has been cited under other provisions of this chapter. Such certificate shall expire annually as determined by the rules and regulations and shall be nontransferable.

(2) In no case shall a certificate holder be allowed to obtain a certificate of competency for more than one fire protection sprinkler contractor or more than one office location at a time. If the certificate holder should leave the employment of a fire protection sprinkler contractor or change office locations, he or she must notify the Commissioner in writing within 30 days.

(d) A certificate holder desiring to renew his or her certificate shall submit a renewal application to the Commissioner and remit therewith a renewal fee of \$100.00 on or before the date determined by the rules and regulations of each year. If the state minimum fire safety standards regarding the installation or maintenance of fire protection sprinkler systems or water-spray systems promulgated by the Commissioner have been revised since the date the certificate holder's expiring certificate was issued, the Commissioner may, upon 30 days' notice, require the certificate holder to again meet one of the requirements of subsection (b) of this Code section prior to the renewal of his or her certificate. (Code 1981, § 25-11-4, enacted by Ga. L. 1982, p. 1212, § 1; Ga. L. 1984, p. 824, § 2; Ga. L. 1989, p. 1124, § 2; Ga. L. 1997, p. 1698, § 1.)

**Code Commission notes.** — Pursuant to "commissioner" was substituted for "state fire Code Section 28-9-5, in 1997, "state fire Commissioner" in paragraph (b)(2).

#### **25-11-5. Licensing of each location; application; fee; prerequisites.**

(a) Where a fire protection sprinkler contractor has multiple office locations for the purpose of design, installation, repair, alteration, addition, maintenance, or inspection of water-based fire protection systems, each location shall be licensed under the provisions of this chapter.

(b) Any organization or individual desiring to become a fire protection sprinkler contractor shall submit to the Commissioner a completed application on forms prescribed by him or her. Such organization or individual shall remit with his or her application a nonrefundable license fee of \$50.00 plus a one-time filing fee of \$50.00. Such fee shall not be prorated for portions of a year.

(c) Prior to obtaining a sprinkler contractor's license, the applicant shall:

(1) Submit to the Commissioner a copy of any and all certificate of competency holders' certificates employed by the applicant; and

(2) Submit to the Commissioner proof of comprehensive liability insurance coverage. The liability insurance policy shall provide coverage in an amount not less than \$1 million and shall cover any loss to property or personal injury caused by the fire protection sprinkler contractor. The policy must be purchased from an insurer authorized to do business in Georgia.

(d) A fire protection sprinkler contractor license shall expire annually as determined by the rules and regulations. A license holder desiring to renew his or her license shall submit a renewal application to the Commissioner and remit a renewal fee of \$50.00 on or before the date determined by the rules and regulations of each year. (Code 1981, § 25-11-5, enacted by Ga. L. 1997, p. 1698, § 1.)

**Editor's notes.** — Ga. L. 1997, p. 1698, former Code Section 25-11-5 as present § 1, effective July 1, 1997, renumbered Code Section 25-11-8.

#### **25-11-6. Inspector's license.**

(a) Any individual desiring to become a fire protection sprinkler system inspector shall submit to the Commissioner a completed application on the prescribed forms. Such individual shall remit with his or her application a nonrefundable license fee of \$50.00 plus a one-time filing fee of \$50.00. Such fees shall not be prorated for portions of a year.

(b) Prior to obtaining a license, the applicant shall demonstrate his or her competence and employment by a sprinkler contractor by:

(1) Successfully completing a competency test by means prescribed by rules and regulations as adopted and promulgated by the Commissioner; and

(2) Submitting to the Commissioner proof of employment by a sprinkler contractor who has comprehensive liability insurance coverage. The liability insurance policy shall provide coverage in an amount not less than \$1 million and shall cover any loss to property or personal injury caused by the fire protection sprinkler inspector. The policy must be purchased from an insurer authorized to do business in Georgia.

(c) A fire protection sprinkler system inspector license shall expire annually as determined by the rules and regulations. A license holder desiring to renew his or her license shall submit a renewal application to the Commissioner and remit a renewal fee of \$50.00 on or before the date determined by the rules and regulations of each year. (Code 1981, § 25-11-6, enacted by Ga. L. 1997, p. 1698, § 1.)

**Editor's notes.** — Ga. L. 1997, p. 1698, former Code Section 25-11-6 as present § 1, effective July 1, 1997, renumbered Code Section 25-11-12.

#### **25-11-7. Fire protection system designer license.**

(a) Any individual desiring to become a fire protection system designer shall submit to the Commissioner a completed application on forms prescribed by the Commissioner. Such individual shall remit with his or her application a nonrefundable license fee of \$50.00 plus a one-time filing fee of \$50.00. Such fee shall not be prorated for portions of a year.

(b) Prior to obtaining a license, the applicant shall demonstrate his or her competence and knowledge of water-based fire protection systems by means prescribed by rules and regulations as adopted and promulgated by the Commissioner or as set forth in Chapter 15 of Title 43.

(c) A fire protection system designer license shall expire annually as determined by the rules and regulations. A license holder desiring to renew



his or her license shall submit a renewal application to the Commissioner and remit a renewal fee of \$50.00 on or before the date determined by the rules and regulations of each year. (Code 1981, § 25-11-7, enacted by Ga. L. 1997, p. 1698, § 1; Ga. L. 1998, p. 128, § 25.)

**Editor's notes.** — Ga. L. 1997, p. 1698, former Code Section 25-11-7 as present § 1, effective July 1, 1997, renumbered Code Section 25-11-13.

**25-11-8. Requirement that installation, repair, or other work be performed or supervised by certificate holder.**

(a) No person shall act as a fire protection sprinkler contractor unless a certificate holder is employed full time, in office or on site or combination thereof, to supervise or perform the installation, repair, alteration, addition, maintenance, or inspection of water-based fire protection systems.

(b) If the only certificate holder employed by a fire protection sprinkler contractor leaves the employment of the fire protection contractor, the contractor shall notify the Commissioner in writing within 30 days. A new certificate holder must be employed by a fire protection sprinkler contractor within 30 days of such notice.

(c) No fire protection sprinkler contractor shall permit any person under his or her employment or control to install, repair, alter, maintain, or inspect any water-based fire protection system unless such person is a certificate holder or is under the direct supervision of a certificate holder employed by the contractor.

(d) Only fire protection sprinkler contractors or certificate of competency holders shall alter or renovate water-based fire protection systems except as otherwise provided by this chapter.

(e) Individuals employed by the building owner or a representative of the building owner may repair leaks, replace broken fittings, or perform other routine maintenance that does not alter the piping arrangement or operation of a water-based fire protection system.

(f) Installations shall conform to codes as adopted by the Commissioner unless otherwise permitted by this chapter or the rules and regulations promulgated pursuant to this chapter.

(g) It shall be unlawful for any person to begin installation of a fire sprinkler system on any proposed or existing building or structure which comes under the classification in paragraph (1) of subsection (b) of Code Section 25-2-13 or which comes under the jurisdiction of the Office of the Commissioner of Insurance pursuant to Code Section 25-2-12 without first having drawings of the designed system approved by the appropriate authority having jurisdiction unless otherwise provided by the rules and regulations promulgated pursuant to this chapter. (Code 1981, § 25-11-5,



enacted by Ga. L. 1982, p. 1212, § 1; Code 1981, § 25-11-8, as redesignated by Ga. L. 1997, p. 1698, § 1.)

**Editor's notes.** — Ga. L. 1997, p. 1698, former Code Section 25-11-8 as present § 1, effective July 1, 1997, renumbered Code Section 25-11-14.

#### **25-11-9. Review of water-based fire protection shop drawings.**

(a) Water-based fire protection shop drawings shall be reviewed for code compliance with the state minimum standards by a certificate of competency holder.

(b) The reviewing certificate holder's signature, printed name, and certificate number indicating such compliance shall be indicated on submitted plans.

(c) Noncode compliance dictated by bid documents shall be reported by means prescribed by the rules and regulations promulgated pursuant to this chapter. (Code 1981, § 25-11-9, enacted by Ga. L. 1997, p. 1698, § 1.)

**Editor's notes.** — Ga. L. 1997, p. 1698, former Code Section 25-11-9 as present § 1, effective July 1, 1997, renumbered Code Section 25-11-15.

#### **25-11-10. Preparation of water-based fire protection system documents for construction by designers.**

(a) Only licensed fire protection system designers or other designers under their direct supervision shall prepare water-based fire protection system documents for construction.

(b) All documents shall be representative of code complying water-based fire protection systems unless otherwise permitted by the rules and regulations promulgated pursuant to this chapter.

(c) The licensed fire protection system designer's signature, printed name, and license number shall be indicated on the shop drawings. (Code 1981, § 25-11-10, enacted by Ga. L. 1997, p. 1698, § 1.)

**Editor's notes.** — Ga. L. 1997, p. 1698, former Code Section 25-11-10 as present § 1, effective July 1, 1997, renumbered Code Section 25-11-16.

#### **25-11-11. Individuals authorized to inspect and maintain systems.**

(a) Inspections, maintenance, and testing required by this chapter shall only be performed by licensed fire protection system inspectors, certificate of competency holders, or representatives of the building owner. Representatives of the building owner shall indicate in writing to the authority having jurisdiction their intent to do such inspections and provide to the authority having jurisdiction proof of knowledge and expertise pertaining to the systems inspected as specified in the rules and regulations adopted pursu-

ant to this chapter. Said representatives of the building owner are exempt from the license requirements specified in Code Section 25-11-6.

(b) Duly authorized manufacturers' representatives while acting in their official capacities are exempt from this chapter.

(c) Inspections and maintenance of water-based fire protection systems owned by a firm, business, or corporation and installed on property under control of the firm, business, or corporation may be performed by an employee of the firm, business, or corporation provided annual inspection and maintenance of the water-based system are performed by a current certificate of competency holder or inspector as defined in this chapter. Said employees are exempt from the license requirements specified in Code Section 25-11-6. (Code 1981, § 25-11-11, enacted by Ga. L. 1997, p. 1698, § 1.)

**Editor's notes.** — Ga. L. 1997, p. 1698, § 1, Code Section 25-11-11 as present Code Section 25-11-19, renumbered former

#### **25-11-12. Rules and regulations; forms.**

The Commissioner may promulgate such rules and regulations as he or she deems necessary to carry out the provisions of this chapter. The Commissioner may also prescribe the forms required for the administration of this chapter. (Code 1981, § 25-11-6, enacted by Ga. L. 1982, p. 1212, § 1; Code 1981, § 25-11-12, as redesignated by Ga. L. 1997, p. 1698, § 1.)

#### **25-11-13. Valid license required for installation or repair of water-based fire protection sprinkler systems; proof of contractor's competency required; effect of chapter on laws regulating contractors' work.**

(a) The installation or repair of any underground facilities or piping which connects to and furnishes water for the water-based fire protection system shall be performed only by a licensed utility contractor, fire protection sprinkler contractor, or licensed plumber in accordance with the minimum fire safety standards adopted by the Commissioner. The installing contractor shall be responsible for the installation of proper underground facilities and piping which provide an adequate flow of water from the fire protection water supply to the water-based fire protection system.

(b) Evidence of inspection shall be given to the owner or his or her representative in the form of a letter indicating the inspector or certificate of competency holder and the license number or certificate number.

(c) Before any local building official shall issue any license or building permit which authorizes the construction of any building or structure containing a water-based fire protection system, such local official shall require a copy of a valid fire protection sprinkler contractor license from the fire protection sprinkler contractor. The fire protection sprinkler

contractor shall be required to pay any fees normally imposed for local licenses or permits, but the local official shall impose no requirements on the fire protection sprinkler contractor to prove competency other than proper evidence of a valid certificate of competency, as issued by the Commissioner.

(d) Nothing in this chapter limits the power of a municipality, county, or the state to require the submission and approval of plans and specifications or to regulate the quality and character of work performed by contractors through a system of permits, fees, and inspections otherwise authorized by law for the protection of the public health and safety. (Code 1981, § 25-11-7, enacted by Ga. L. 1982, p. 1212, § 1; Ga. L. 1991, p. 1317, § 1; Code 1981, § 25-11-13, as redesignated by Ga. L. 1997, p. 1698, § 1.)

**25-11-14. Applicability to work performed for state or political subdivision; contract and bid requirements for such work.**

This chapter shall also apply to any fire protection sprinkler contractor performing work for the state or any municipality, county, or other political subdivision. Officials of the state or any municipality, county, or other political subdivision are required to determine compliance with this chapter before awarding any contracts for the installation, repair, alteration, addition, maintenance, or inspection of a water-based fire protection system. Bids tendered for such contracts shall be accompanied by a copy of a valid certificate of competency. (Code 1981, § 25-11-8, enacted by Ga. L. 1982, p. 1212, § 1; Code 1981, § 25-11-14, as redesignated by Ga. L. 1997, p. 1698, § 1.)

**25-11-15. Deposit of fees collected under chapter; authority to accept grants for administration of chapter.**

(a) All fees collected pursuant to the provisions of this chapter shall be deposited with the Fiscal Division of the Department of Administrative Services.

(b) The Commissioner shall be authorized to receive grants for the administration of this chapter from parties interested in upgrading and improving the quality of water-based fire protection systems, education of the public pertaining to water-based fire protection systems, or the upgrading of fire protection, in general, in Georgia. (Code 1981, § 25-11-9, enacted by Ga. L. 1982, p. 1212, § 1; Ga. L. 1993, p. 1402, § 18; Code 1981, § 25-11-15, as redesignated by Ga. L. 1997, p. 1698, § 1.)

**25-11-16. Cease and desist order against violators; penalty for violations; order requiring compliance; revocation of certificate for failure to comply with order.**

(a) Whenever the Commissioner shall have reason to believe that any individual is or has been violating any provisions of this chapter, the



Commissioner, his or her deputy, his or her assistant, or other designated persons may issue and deliver to the individual an order to cease and desist such violation.

(b) Violation of any provision of this chapter or failure to comply with a cease and desist order is cause for revocation of any or all certificates and licenses issued by the Commissioner for a period of not less than six months and not to exceed five years. If a new certificate or license has been issued to the person so charged, the order of revocation shall operate effectively with respect to such new certificates and licenses held by such person. Decisions under this subsection may be appealed as provided by law.

(c) Any person who violates this chapter or any rule, regulation, or order issued by the Commissioner under this chapter shall be subject to a civil penalty imposed by the Commissioner of not more than \$1,000.00 for a first offense, not less than \$1,000.00 and not more than \$2,000.00 for a second offense, and not less than \$2,000.00 or more than \$5,000.00 for a third or subsequent offense for each day a violation persists after such person is notified of the Commissioner's intent to impose such penalty and the right to a hearing with respect to same.

(d) Any order shall contain or be accompanied by a notice of opportunity for hearing which may provide that a hearing will be held if and only if a person subject to the order requests a hearing within ten days of receipt of the order and notice. The order and notice shall be served by delivery by the Commissioner or his or her agent or by registered or certified mail or statutory overnight delivery, return receipt requested. Any person who fails to comply with any order under this subsection is guilty of a misdemeanor and may be punished by law. (Code 1981, § 25-11-10, enacted by Ga. L. 1982, p. 1212, § 1; Ga. L. 1989, p. 1124, § 2; Code 1981, § 25-11-16, as redesignated by Ga. L. 1997, p. 1698, § 1; Ga. L. 1998, p. 128, § 25; Ga. L. 2000, p. 1589, § 3.)

**Editor's notes.** — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to subsection (d) is applicable with respect to notices delivered on or after July 1, 2000.

**OPINIONS OF THE ATTORNEY GENERAL**

**Fingerprinting of offenders.** — The offense covered by O.C.G.A. § 25-11-16(d) is not currently designated as an offense requiring fingerprinting. 1997 Op. Att'y Gen. No. 97-330.

**25-11-17. Additional grounds for revocation or suspension of licenses.**

In addition to the grounds set forth in Code Section 25-11-16, it is cause for revocation or suspension of certificates or licenses by the Commissioner if it is determined that the holder has:

(1) Rendered inoperative a water-based fire protection system covered by this chapter, except during a reasonable time during which the system is being repaired, altered, added to, maintained, or inspected;

(2) Falsified any record required to be maintained by this chapter or rules or regulations adopted pursuant to this chapter or current fire codes enforced by the Commissioner;

(3) Improperly installed, repaired, serviced, modified, altered, inspected, or tested a water-based fire protection system;

(4) While holding a certificate or license, allowed another person to use the certificate or license or certificate number or license number other than his or her own valid certificate or license or certificate number or license number;

(5) While holding a certificate or license, used a certificate or license or certificate number or license number other than his or her own valid certificate or license or certificate number or license number;

(6) Used credentials, methods, means, or practices to impersonate a representative of the Commissioner or the state fire marshal or any local fire chief, fire marshal, or other fire authority having jurisdiction;

(7) Failed to maintain the minimum insurance coverage as set forth in this chapter; or

(8) Failed to maintain the minimum requirements to obtain a certificate of competency or other licenses. (Code 1981, § 25-11-17, enacted by Ga. L. 1997, p. 1698, § 1.)

#### **25-11-18. Failure to renew certificate or license.**

The failure to renew a certificate or license by the expiration date as set forth in this chapter will cause the certificate or license to become inoperative. A certificate or license which is inoperative because of the failure to renew it shall be restored upon payment of the applicable fee plus a penalty of not more than \$250.00 if said fees are paid within 90 days of expiration. After 90 days new certificates and licenses must be applied for as required for an initial certificate or license. (Code 1981, § 25-11-18, enacted by Ga. L. 1997, p. 1698, § 1.)

#### **25-11-19. Systems exempt from chapter.**

The provisions of this chapter shall not apply to water-based automatic sprinkler systems for use in single-family dwellings or limited water-based systems permitted to be connected directly to a domestic water supply system as allowed by the NFIPA Life Safety Code adopted by the Commissioner's rules and regulations. (Code 1981, § 25-11-11, enacted by Ga. L.

1982, p. 1212, § 1; Code 1981, § 25-11-19, as redesignated by Ga. L. 1997, p. 1698, § 1.)



CHAPTER 12

REGULATION OF FIRE EXTINGUISHERS AND SUPPRESSION SYSTEMS

Sec.		Sec.	
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25-12-2.	Definitions.	25-12-10.	Forms of licenses, permits, and applications; information required.
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25-12-5.	Visual inspection of preengineered fire suppression systems or portable fire extinguishers by fire chiefs, fire marshals, or fire inspectors.	25-12-13.	Amended licenses or permits.
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25-12-8.	Permit and fee required for individual installing, inspecting, servicing, or testing; exemption.	25-12-16.	Specifications for service tags to be attached to fire extinguishers and fire suppression systems.
		25-12-17.	Violation of chapter by licensee or permittee.
		25-12-18.	Cease and desist orders; period of revocation; civil penalty; opportunity for hearing.
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25-12-1. Compliance with chapter; license requirement.

It is unlawful for any firm to engage in the business of installing, inspecting, recharging, repairing, servicing, or testing of portable fire extinguishers or fire suppression systems, as defined by this chapter, in this state except in conformity with the provisions of this chapter. Each firm engaging in any such business must possess a valid and subsisting license issued by the Commissioner. Such license shall not be required for any firm or governmental entity that engages only in installing, inspecting, recharging, repairing, servicing, or testing of portable fire extinguishers or fire suppression systems owned by the firm and installed on property under the control of said firm. Such firms shall remain subject to the rules and regulations adopted pursuant to this chapter. (Code 1981, § 25-12-1, enacted by Ga. L. 1991, p. 933, § 1; Ga. L. 1997, p. 558, § 1.)

**OPINIONS OF THE ATTORNEY GENERAL**

For an update of crimes and offenses for which the Georgia Crime Information Center is authorized to collect and file identifying data, see 1991 Op. Att'y Gen. No. 91-35.

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Fires, § 32 et seq.

**25-12-2. Definitions.**

As used in this chapter, the term:

- (1) “Commissioner” means the Safety Fire Commissioner.
- (2) “Engineered fire suppression system” means any fire suppression system having pipe lengths, number of fittings, number and types of nozzles, suppression agent flow rates, and nozzle pressures as determined by calculations derived from the appropriate standards of the National Fire Protection Association, whether those calculations are performed by hand or by a computer program or by other method of calculation. These systems may consist of other components, including, but not limited to, detection devices, alarm devices, and control devices as tested and approved by a nationally recognized testing laboratory and shall be manufacturer listed as compatible with the fire suppression system involved.
- (3) “Fire suppression system” means any fire-fighting system employing a suppression agent with the purpose of controlling, suppressing, or extinguishing a fire in a specific hazard. The suppression agent shall be a currently recognized agent or water additive required to control, suppress, or extinguish a fire. The term fire suppression system shall include engineered and preengineered systems as defined in this chapter and shall not include those systems addressed in Chapter 11 of this title.
- (4) “Firm” means any business, person, partnership, organization, association, corporation, contractor, subcontractor, or individual.
- (5) “License” means the document issued by the Commissioner which authorizes a firm to engage in the business of installation, repair, alteration, recharging, inspection, maintenance, service, or testing of fire suppression systems or portable fire extinguishers.
- (6) “Permit” means the document issued by the Commissioner which authorizes an individual to install, inspect, repair, recharge, service, or test fire suppression systems or portable fire extinguishers.
- (7) “Portable fire extinguisher” means a portable device containing an extinguishing agent that can be expelled under pressure for the purpose of suppressing or extinguishing a fire. The device must be listed

by a nationally recognized testing laboratory. The device must bear a manufacturer's name and serial number. The listings, approvals, and serial numbers may be stamped on the manufacturer's identification and instruction plate or on a separate plate of the testing laboratory soldered or attached to the extinguisher shell in a permanent manner set forth by the listing or approving organization.

(8) "Preengineered fire suppression system" means any system having predetermined flow rates, nozzle pressures, and quantities of an extinguishing agent. These systems have the specific pipe size, maximum and minimum pipe lengths, flexible hose specifications, number of fittings, and number and types of nozzles prescribed by a nationally recognized testing laboratory. The hazards protected by these systems are specifically limited as to the type and size by the testing laboratory based upon actual fire tests. Limitations on hazards that can be protected by these systems are contained in the manufacturer's installation manual, which is referenced as part of the listing. (Code 1981, § 25-12-2, enacted by Ga. L. 1991, p. 933, § 1; Ga. L. 1999, p. 656, § 1.)

#### **25-12-3. Installation, inspection, servicing, or testing of fire suppression systems.**

All fire suppression systems required by the Commissioner's rules and regulations or by other state or local fire safety rules or regulations must be installed, inspected, repaired, recharged, serviced, or tested only by a firm licensed under the provisions of this chapter, except as otherwise provided by this chapter. (Code 1981, § 25-12-3, enacted by Ga. L. 1991, p. 933, § 1.)

#### **25-12-4. Installation, inspection, servicing, or testing of portable fire extinguishers.**

All portable fire extinguishers required by the Commissioner's rules and regulations or by other state or local fire safety rules or regulations must be installed, inspected, repaired, recharged, serviced, or tested only by a firm licensed under the provisions of this chapter, except as otherwise provided by this chapter. (Code 1981, § 25-12-4, enacted by Ga. L. 1991, p. 933, § 1.)

#### **25-12-5. Visual inspection of preengineered fire suppression systems or portable fire extinguishers by fire chiefs, fire marshals, or fire inspectors.**

The provisions of this chapter do not apply to fire chiefs, fire marshals, fire inspectors, or insurance company inspectors with regard to the routine visual inspection of preengineered fire suppression systems or portable fire extinguishers. (Code 1981, § 25-12-5, enacted by Ga. L. 1991, p. 933, § 1.)



**25-12-6. Visual inspection of self-owned fire suppression systems or portable fire extinguishers; fees not applicable to employees of local government or members of legally organized fire departments.**

(a) The provisions of this chapter do not apply to any firm that engages only in the routine visual inspection of fire suppression systems or portable fire extinguishers owned by the firm and installed on property under the control of said firm.

(b) The fees required by this chapter shall not apply to employees of federal, state, or local governments or to members of legally organized fire departments while acting in their official capacities. (Code 1981, § 25-12-6, enacted by Ga. L. 1991, p. 933, § 1.)

**25-12-7. License and fee required for firm installing, inspecting, servicing, or testing fire suppression systems or portable fire extinguishers.**

Each firm in the business of installing, altering, inspecting, repairing, recharging, servicing, maintaining, or testing fire suppression systems or in the business of inspecting, repairing, recharging, servicing, maintaining, or testing portable fire extinguishers is required to obtain a license from the Commissioner. The annual fee for said license shall be as established by the Commissioner by rule or regulation, but such license fee shall not exceed \$50.00. (Code 1981, § 25-12-7, enacted by Ga. L. 1991, p. 933, § 1.)

**25-12-8. Permit and fee required for individual installing, inspecting, servicing, or testing; exemption.**

Each individual actually performing the installing, inspecting, repairing, recharging, servicing, or testing activities must possess a valid and subsisting permit issued by the Commissioner. The annual fee for said permit shall be as established by the Commissioner by rule or regulation, but such permit fee shall not exceed \$25.00. Such permit shall not be required for any individual employed by any firm or governmental entity that engages only in installing, inspecting, recharging, repairing, servicing, or testing of portable fire extinguishers or fire suppression systems owned by the firm and installed on property under the control of said firm. Such individuals shall remain subject to the rules and regulations adopted pursuant to this chapter. (Code 1981, § 25-12-8, enacted by Ga. L. 1991, p. 933, § 1; Ga. L. 1997, p. 558, § 2.)

**25-12-9. Period of licenses and permits; failure to renew.**

The licenses and permits required by this chapter shall be issued by the Commissioner for each license year beginning January 1 and expiring the following December 31. The failure to renew a license or permit by

December 31 will cause the license or permit to become inoperative. A license or permit which is inoperative because of the failure to renew it shall be restored upon payment of the applicable fee plus a penalty equal to the applicable fee if said fees are paid within 90 days of expiration. After 90 days, the firm and the employees thereof must apply for new licenses and permits as required for an initial license or permit. (Code 1981, § 25-12-9, enacted by Ga. L. 1991, p. 933, § 1.)

**25-12-10. Forms of licenses, permits, and applications; information required.**

The forms of such licenses and permits and applications and fees therefor shall be prescribed by the Commissioner by rule or regulation, subject to the limitations on fees provided for in Code Sections 25-12-7 and 25-12-8. In addition to such other information and data as the Commissioner determines are appropriate and required for such forms, there shall be included in such forms the following matters:

(1) Each such application shall be sworn to by the applicant or, if a corporation, by an officer thereof;

(2) Each application shall clearly state, in detail as set forth by the Commissioner, the type of activity or activities for which the applicant desires a license or permit to perform;

(3) An application for a permit shall include the name of the licensee employing such permittee, and the permit issued in pursuance of such application shall also set forth the name of such licensee. For persons covered by Code Section 25-12-8, the application and permit shall bear the business name of the person's employer; and

(4) The license or permit issued by the Commissioner shall clearly state the activity or activities for which the firm or individual has been issued the license or permit to perform. The licensee or permittee shall not perform any activity not noted on the license or permit issued by the Commissioner. (Code 1981, § 25-12-10, enacted by Ga. L. 1991, p. 933, § 1.)

**25-12-11. Requirement for issuance of license.**

A license may not be issued by the Commissioner until:

(1) The applicant has submitted to the Commissioner evidence of registration as a Georgia corporation;

(2) The Commissioner or a person designated by him has by inspection determined that the applicant possesses the equipment required for the activities the applicant requests to be licensed to perform. If the applicant includes in the request the high-pressure hydrostatic testing of

equipment, the applicant must submit a copy of its United States Department of Transportation approval and renewals. If the applicant includes in the request the transfer of Halogenated fire suppression agents, the applicant must submit a copy of the current Underwriter's Laboratories on-site inspection form for a manufacturer's represented Halon pumping station. The Commissioner shall give an applicant 60 days to correct any deficiencies discovered by inspection;

(3) The applicant has submitted to the Commissioner proof of a valid comprehensive liability insurance policy purchased from an insurer authorized to do business in Georgia. The coverage must include bodily injury and property damage, products liability, completed operations, and contractual liability. The proof of insurance must also be provided before any license can be renewed. The minimum amount of said coverage shall be \$1 million or such other amount as specified by the Commissioner. An insurer which provides such coverage shall notify the Commissioner of any change in coverage; and

(4) The applicant, when filing an application for an examination, pays a nonrefundable filing fee fixed by rule or regulation of the Commissioner. (Code 1981, § 25-12-11, enacted by Ga. L. 1991, p. 933, § 1.)

#### **25-12-12. Requirement for issuance of permit.**

No permit may be issued to a person for the first time by the Commissioner until the applicant has submitted a nonrefundable filing fee fixed by rule or regulation of the Commissioner. (Code 1981, § 25-12-12, enacted by Ga. L. 1991, p. 933, § 1.)

**Code Commission notes.** — Pursuant to (a) designation was deleted since there was Code Section 28-9-5, in 1991, the subsection no subsection (b).

#### **25-12-13. Amended licenses or permits.**

(a) Any firm or individual holding a valid license or permit desiring to perform an activity not covered by the current permit may submit an application for an amended license or permit at any time between January 1 and the date established by the Commissioner for filing applications for renewing an annual license or permit.

(b) The provisions of this chapter relating to the requirements for obtaining a license or permit shall apply to applications for an amended license or permit. The Commissioner shall by rule or regulation establish the fee for obtaining an amended license and the fee for an amended permit, but such fees shall not exceed the respective limits set forth in Code Sections 25-12-7 and 25-12-8.

(c) The fees for an amended license or permit shall not apply if the new activity or activities are included in an application for a renewal of the



annual license or permit. The application for renewal must be accompanied by the proof of training and other applicable documentation regarding the activity or activities desired to be included on the new annual license or permit. (Code 1981, § 25-12-13, enacted by Ga. L. 1991, p. 933, § 1.)

**25-12-14. Production of license or permit on demand.**

Every permittee must have a valid and subsisting permit upon his person at all times while engaging in the installing, inspection, recharging, repairing, servicing, or testing of fire suppression systems or portable fire extinguishers. Every licensee or permittee must be able to produce a valid license or valid permit, as appropriate, upon demand by the Commissioner or his representatives or by any local authority having jurisdiction for fire protection or prevention or by any person for whom the licensee or permittee solicits to perform any of the activities covered by this chapter. (Code 1981, § 25-12-14, enacted by Ga. L. 1991, p. 933, § 1.)

**25-12-15. Rules and regulations for standards of fire suppression systems and fire extinguishers.**

The Commissioner may adopt rules and regulations setting forth the proper installation, inspection, recharging, repairing, servicing, or testing of fire suppression systems or portable fire extinguishers. The Commissioner may adopt by rule the applicable standards of the National Fire Protection Association or another nationally recognized organization, if the standards are judged by him to be suitable for the enforcement of this chapter. All fire suppression systems covered by Code Section 25-12-3 and all portable fire extinguishers covered by Code Section 25-12-4 shall be installed, inspected, recharged, repaired, serviced, or tested in compliance with this chapter and with the Commissioner's rules and regulations. (Code 1981, § 25-12-15, enacted by Ga. L. 1991, p. 933, § 1.)

**25-12-16. Specifications for service tags to be attached to fire extinguishers and fire suppression systems.**

The Commissioner shall make and promulgate specifications as to the number, type, size, shape, color, and information and data contained thereon of service tags to be attached to all portable fire extinguishers and fire suppression systems covered by this chapter when they are installed, inspected, recharged, repaired, serviced, or tested. It shall be unlawful to install, inspect, recharge, repair, service, or test any portable fire extinguisher or fire suppression system without attaching the required tag or tags completed in detail, including the actual month, day, and year the work was performed, or to use a tag not meeting the specifications set forth by the Commissioner. (Code 1981, § 25-12-16, enacted by Ga. L. 1991, p. 933, § 1.)

**25-12-17. Violation of chapter by licensee or permittee.**

(a) The violation of any provision of this chapter or any rule or regulation adopted and promulgated pursuant to this chapter or the failure or refusal to comply with any notice or order to correct a violation or any cease and desist order by any person who possesses a license or permit issued pursuant to this chapter or who is required to have a license or permit issued pursuant to this chapter is cause for denial, nonrenewal, revocation, or suspension of such license or permit by the Commissioner after a determination that such person is guilty of such violations. An order of suspension shall state the period of time of such suspension, which period may not be in excess of two years from the date of such order. An order of revocation shall state the period of time of such revocation, which period may not be in excess of five years from the date of such order. Such order shall effect suspension or revocation of all licenses and permits then held by the person, and during such period of time no license or permit shall be issued to such person. During the suspension or revocation of any license or permit, the licensee or permittee whose license or permit has been suspended or revoked shall not engage in or attempt or profess to engage in any transaction or business for which a license or permit is required under this chapter or directly or indirectly own, control, or be employed in any manner by any firm, business, or corporation for which a license or permit under this chapter is required. If, during the period between the beginning of proceedings and the entry of an order of suspension or revocation by the Commissioner, a new license or permit has been issued to the person so charged, the order of suspension or revocation shall operate to suspend or revoke, as the case may be, such new license or permit held by such person.

(b) The department shall not, so long as the revocation or suspension remains in effect, issue any new license or permit for the establishment of any new firm, business, or corporation of any person or applicant that has or will have the same or similar management, ownership, control, employees, permittees, or licensees or will use the same or a similar name as the revoked or suspended firm, business, corporation, person, or applicant.

(c) The Commissioner may deny, nonrenew, suspend, or revoke the license or permit of:

(1) Any person, firm, business, or corporation whose license has been suspended or revoked under this chapter;

(2) Any firm, business, or corporation if any officer, director, stockholder, owner, or person who has a direct or indirect interest in the firm, business, or corporation has had his or her license or permit suspended under this chapter; and

(3) Any person who is or has been an officer, director, stockholder, or owner of a firm, business, or corporation or who has or had a direct or

indirect interest in a firm, business, or corporation whose license or permit has been suspended or revoked under this chapter.

(d) In addition to the grounds set forth in this Code section, it is cause for denial, nonrenewal, revocation, or suspension of a license or permit by the Commissioner if he or she determines that the licensee or permittee has:

(1) Rendered inoperative a portable fire extinguisher or preengineered or engineered fire suppression system covered by this chapter, except during such time as the extinguisher or preengineered or engineered system is being inspected, recharged, hydrotested, repaired, altered, added to, maintained, serviced, or tested or except pursuant to court order;

(2) Falsified any record required to be maintained by this chapter or rules or regulations adopted pursuant to this chapter or current fire codes enforced by the Commissioner;

(3) Improperly installed, recharged, hydrotested, repaired, serviced, modified, altered, inspected, or tested a portable fire extinguisher or preengineered or engineered fire suppression system;

(4) While holding a permit or license, allowed another person to use the permit or license or permit number or license number or used a license or permit or license number or permit number other than his or her own valid license or permit or license number or permit number;

(5) Failed to provide proof of or failed to maintain the minimum comprehensive liability insurance coverage as set forth in paragraph (3) of Code Section 25-12-11;

(6) Failed to obtain, retain, or maintain one or more of the qualifications for a license or permit required by this chapter;

(7) Used credentials, methods, means, or practices to impersonate a representative of the Commissioner or the state fire marshal or any local fire chief, fire marshal, or other fire authority having jurisdiction;

(8) Installed, recharged, hydrotested, repaired, serviced, modified, altered, inspected, maintained, added to, or tested a portable fire extinguisher or preengineered or engineered fire suppression system without a current, valid license or permit when such license or permit is required by this chapter;

(9) Made a material misstatement or misrepresentation or committed a fraud in obtaining or attempting to obtain a license or permit; or

(10) Failed to notify the Commissioner, in writing, within 30 days after a change of residence, principal business address, or name.

(e) In addition, the Commissioner shall not issue a new license or permit if the Commissioner finds that the circumstance or circumstances for which



the license or permit was previously suspended or revoked still exist or are likely to recur. (Code 1981, § 25-12-17, enacted by Ga. L. 1991, p. 933, § 1; Ga. L. 2002, p. 592, § 1.)

**The 2002 amendment**, effective July 1, 2002, designated the existing provisions as subsection (a); in subsection (a), in the first sentence, inserted “or the failure or refusal to comply with any notice or order to correct a violation or any cease and desist order”, inserted “issued pursuant to this chapter or who is required to have a license or permit issued pursuant to this chapter”, inserted “denial, nonrenewal,”, and added “after a determination that such person is guilty of such violations”, substituted “two years” for “one year” in the second sentence, substituted “five years” for “two years” in the third sentence, substituted “all licenses and permits” for “the license or permit” in the

fourth sentence, added the fifth sentence, and substituted “to suspend or revoke, as the case may be,” for “effectively with respect to” in the last sentence; and added subsections (b) through (e).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2002, a comma was inserted following “revocation” in the first sentence in subsection (a); a comma was deleted following “licensees” in subsection (b); in paragraph (d)(9), a comma was deleted following “misstatement” and “misrepresentation” and “or” was inserted following “misstatement”; and “recur” was substituted for “reoccur” in subsection (e).

**25-12-18. Cease and desist orders; period of revocation; civil penalty; opportunity for hearing.**

(a) Whenever the Commissioner shall have reason to believe that any individual is or has been violating any provisions of this chapter, the Commissioner, his or her deputy, his or her assistant, or other designated persons may issue and deliver to the individual an order to cease and desist such violation.

(b) Violation of any provision of this chapter or failure to comply with a cease and desist order is cause for revocation of any or all permits and licenses issued by the Commissioner for a period of not less than six months and not to exceed five years. If a new permit or license has been issued to the person so charged, the order of revocation shall operate effectively with respect to such new permits and licenses held by such person. Decisions under this subsection may be appealed as provided by law.

(c) Any person who violates this chapter or any rule, regulation, or order issued by the Commissioner under this chapter shall be subject to a civil penalty imposed by the Commissioner of not more than \$1,000.00 for a first offense, not less than \$1,000.00 and not more than \$2,000.00 for a second offense, and not less than \$2,000.00 or more than \$5,000.00 for a third or subsequent offense for each day a violation persists after such person is notified of the Commissioner’s intent to impose such penalty and the right to a hearing with respect to same.

(d) Any order shall contain or be accompanied by a notice of opportunity for hearing which may provide that a hearing will be held if and only if a person subject to the order requests a hearing within ten days of receipt

of the order and notice. The order and notice shall be served by delivery by the Commissioner or his or her agent or by registered or certified mail or statutory overnight delivery, return receipt requested. Any person who fails to comply with any order under this subsection is guilty of a misdemeanor and may be punished as provided by law. (Code 1981, § 25-12-18, enacted by Ga. L. 1991, p. 933, § 1; Ga. L. 2002, p. 592, § 2; Ga. L. 2003, p. 140, § 25.)

**The 2002 amendment**, effective July 1, 2002, rewrote this Code section. 2003, part of an Act to revise, modernize, and correct the Code, revised language in subsections (b) and (d).

**The 2003 amendment**, effective May 14,

### **25-12-19. Penalty for violation of chapter.**

(a) Any person, firm, or corporation which violates any provision of this chapter or any order, rule, or regulation of the Commissioner shall be guilty of a misdemeanor.

(b) It shall also constitute a misdemeanor willfully or intentionally to:

(1) Obliterate the serial number on a fire suppression system or portable fire extinguisher for the purposes of falsifying service records;

(2) Improperly install a fire suppression system or improperly recharge, repair, service, or test any such suppression system or any such portable fire extinguisher;

(3) While holding a permit or license, allow another person to use the permit or license or permit number or license number or to use a license or permit or license number or permit number other than his own valid license or permit or license number or permit number;

(4) Use or permit the use of any license by an individual or organization other than the one to whom the license is issued;

(5) To use any credential, method, means, or practice to impersonate a representative of the Commissioner or the state fire marshal or any local fire chief, fire marshal, or other fire authority having jurisdiction; or

(6) To engage in the business of installing, inspecting, recharging, repairing, servicing, or testing portable fire extinguishers or fire suppression systems except in conformity with the provisions of this chapter and the applicable rules and regulations of the Commissioner. (Code 1981, § 25-12-19, enacted by Ga. L. 1991, p. 933, § 1.)

### **25-12-20. Delegation of authority by the Commissioner.**

Any authority, power, or duty vested in the Commissioner by any provision of this chapter may be exercised, discharged, or performed by a

deputy, assistant, or other designated employee acting in the Commissioner's name and by his delegated authority. The Commissioner shall be responsible for the official acts of such persons who act in his name and by his authority. (Code 1981, § 25-12-20, enacted by Ga. L. 1991, p. 933, § 1.)

**25-12-21. Fees collected; grants and gifts.**

(a) All fees collected by the Commissioner for licenses, permits, and related examinations pursuant to the provisions of this chapter shall be deposited in the general fund of this state in accordance with applicable laws of this state.

(b) The Commissioner is authorized to receive grants or gifts for the administration of this chapter from parties interested in upgrading and improving the quality of fire protection provided by portable fire extinguishers or fire suppression systems. (Code 1981, § 25-12-21, enacted by Ga. L. 1991, p. 933, § 1.)

**25-12-22. Power of municipality, county, or state to regulate not limited.**

(a) Nothing in this chapter limits the power of a municipality, a county, or the state to require the submission and approval of plans and specifications or to regulate the quality and character of work performed by contractors through a system of permits, fees, and inspections otherwise authorized by law for the protection of the public health and safety.

(b) No municipality or county shall impose any other requirements on persons licensed or permitted by the Commissioner as set forth in this chapter to prove competency to conduct any activity covered by said license or permit. (Code 1981, § 25-12-22, enacted by Ga. L. 1991, p. 933, § 1.)



CHAPTER 13

MUNICIPAL, COUNTY, AND VOLUNTEER FIRE  
DEPARTMENTS NOMENCLATURE

Sec.		Sec.	
25-13-1.	Short title.		department in connection with solicitation, advertisement, publication, or production.
25-13-2.	Declaration of public policy.		
25-13-3.	Definitions.		
25-13-4.	Prohibition against use of nomenclature pertaining to particular fire department in connection with solicitation, advertisement, publication, or production.	25-13-6.	Procedure for obtaining permission to use nomenclature or symbols; discretion of local governing body.
		25-13-7.	Injunctions against violations.
		25-13-8.	Civil penalties.
25-13-5.	Prohibition against use of symbols pertaining to particular fire	25-13-9.	Actions for civil damages.
		25-13-10.	Criminal penalties.

25-13-1. Short title.

This chapter shall be known and may be cited as the “Municipal, County, and Volunteer Fire Departments Nomenclature Act of 1996.” (Code 1981, § 25-13-1, enacted by Ga. L. 1996, p. 772, § 1.)

25-13-2. Declaration of public policy.

It is declared to be contrary to the health, safety, and public welfare of the people of this state for any individual or organization to act in a manner which would mislead the public into believing that a member of the public is dealing with any municipal, county, or volunteer fire department or with a member thereof when in fact the individual or organization is not the municipal, county, or volunteer fire department or a member thereof. Furthermore, the municipal, county, or volunteer fire department, which provides quality fire protection and safety services to the citizens of this state, has established a name for excellence in its field. This name should be protected for the department, its members, and the citizens of this state. Therefore, no person or organization should be allowed to use any municipal, county, or volunteer fire department’s name or any term used to identify the department or its members without the expressed permission of the local governing body. The provisions of this chapter are in furtherance of the promotion of this policy. (Code 1981, § 25-13-2, enacted by Ga. L. 1996, p. 772, § 1.)

25-13-3. Definitions.

As used in this chapter, the term:

- (1) “Badge” means any official badge used in the past or present by members of municipal, county, or volunteer fire departments.

(2) “Department” means any municipal, county, or volunteer fire department.

(3) “Director of public safety” means the director of public safety for any municipal, county, or volunteer fire department.

(4) “Emblem” means any official patch or other emblem worn currently or formerly or used by the department to identify the department or its employees.

(5) “Fire chief” means the fire chief for any municipal, county, or volunteer fire department.

(6) “Fire department” means any fire department which is authorized to exercise the general and emergency powers enumerated in Code Sections 25-3-1 and 25-3-2. Such term also means any department, agency, organization, or company operating in this state with the intent and purpose of carrying out the duties, functions, powers, and responsibilities normally associated with a fire department. These duties, functions, powers, and responsibilities include but are not limited to the protection of life and property against fire, explosions, or other hazards.

(7) “Local governing body” means, for a county, a county governing authority as defined in Code Section 1-3-3; for a municipal corporation, the governing authority of a municipal corporation as set forth in the municipal corporation’s charter; or, for a volunteer fire department, the board of directors or other governing body of such department by whatever name called.

(8) “Person” means any person, corporation, organization, or political subdivision of this state.

(9) “Volunteer fire department” means a fire department which has been issued a certificate of compliance pursuant to Article 2 of Chapter 3 of this title and which consists of uncompensated or part-time firefighters.

(10) “Willful violator” means any person who knowingly violates the provisions of this chapter. Any person who violates this chapter after being advised in writing by the fire chief, the director of public safety, or the local governing authority that such person’s activity is in violation of this chapter shall be considered a willful violator and shall be considered in willful violation of this chapter. Any person whose agent or representative is a willful violator and who has knowledge of the violation by the agent or representative shall also be considered a willful violator and shall be considered in willful violation of this chapter, unless, upon learning of the violation, he or she immediately terminates the agency or other relationship with such violator. (Code 1981, § 25-13-3, enacted by Ga. L. 1996, p. 772, § 1.)

**25-13-4. Prohibition against use of nomenclature pertaining to particular fire department in connection with solicitation, advertisement, publication, or production.**

Any person who uses words pertaining to a particular municipal, county, or volunteer fire department in connection with the planning, conduct, or execution of any solicitation; advertisement, circular, book, pamphlet, or other publication; or play, motion picture, broadcast, telecast, telemarketing, or other production in a manner reasonably calculated to convey the impression that such solicitation; advertisement, circular, book, pamphlet, or other publication; or play, motion picture, broadcast, telecast, telemarketing, or other production is approved, endorsed, or authorized by or associated with the department without written permission from the local governing authority shall be in violation of this chapter. (Code 1981, § 25-13-4, enacted by Ga. L. 1996, p. 772, § 1.)

**25-13-5. Prohibition against use of symbols pertaining to particular fire department in connection with solicitation, advertisement, publication, or production.**

Any person who uses or displays any current or historical symbol, including any emblem, seal, or badge, used by the department in connection with the planning, conduct, or execution of any solicitation; advertisement, circular, book, pamphlet, or other publication; or play, motion picture, broadcast, telecast, telemarketing, or other production in a manner reasonably calculated to convey the impression that such solicitation; advertisement, circular, book, pamphlet, or other publication; or play, motion picture, broadcast, telecast, telemarketing, or other production is approved, endorsed, or authorized by or associated with the department without written permission from the local governing authority shall be in violation of this chapter. (Code 1981, § 25-13-5, enacted by Ga. L. 1996, p. 772, § 1.)

**25-13-6. Procedure for obtaining permission to use nomenclature or symbols; discretion of local governing body.**

Any person wishing permission to use the nomenclature or a symbol of a department may submit a written request for such permission to the fire chief or director of public safety. Within 15 calendar days after receipt of the request, the fire chief or director of public safety shall send a notice with his or her recommendation to the local governing body stating whether the person may use the requested nomenclature or symbol. Within 30 calendar days after receipt of a recommendation from the fire chief or director of public safety, the local governing body shall send a notice to the requesting party of their decision on whether or not the person may use the requested nomenclature or symbol. If the local governing body does not respond



within the 30 day time period, then the request is presumed to have been denied. The grant of permission under Code Section 35-10-4 or 35-10-5 shall be in the discretion of the local governing body under such conditions as the local governing body may impose. (Code 1981, § 25-13-6, enacted by Ga. L. 1996, p. 772, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1996, “of” was substituted for “or” near the middle of the third sentence.

#### **25-13-7. Injunctions against violations.**

Whenever there shall be an actual or threatened violation of Code Section 25-13-4 or 25-13-5, the local governing body shall have the right to apply to the superior court of the county of residence of the violator for an injunction to restrain the violation. (Code 1981, § 25-13-7, enacted by Ga. L. 1996, p. 772, § 1.)

#### **25-13-8. Civil penalties.**

In addition to any other relief or sanction for a violation of Code Section 25-13-4 or 25-13-5 and where the violation is willful, the local governing body shall be entitled to collect a civil penalty in the amount of \$500.00 for each violation. Further, when there is a finding of willful violation, the local governing body shall be entitled to recover reasonable attorney’s fees for bringing any action against the violator. The local governing body shall be entitled to seek civil sanctions in the superior court in the county of residence of the violator. (Code 1981, § 25-13-8, enacted by Ga. L. 1996, p. 772, § 1.)

#### **25-13-9. Actions for civil damages.**

Any person who has given money or any other item of value to another person due in part to such person’s use of the nomenclature or symbol of a department in violation of this chapter may maintain a suit for damages against the violator. Where it is proven that the violation was willful, the victim shall be entitled to recover treble damages, punitive damages, and reasonable attorney’s fees. (Code 1981, § 25-13-9, enacted by Ga. L. 1996, p. 772, § 1.)

#### **25-13-10. Criminal penalties.**

Any person who violates the provisions of this chapter shall be guilty of a felony and upon conviction thereof shall be subject to a fine of not less than \$1,000.00 or more than \$5,000.00 or to imprisonment for not less than one or more than five years, or both. Each violation shall constitute a separate offense. (Code 1981, § 25-13-10, enacted by Ga. L. 1996, p. 772, § 1.)

## TITLE 26

### FOOD, DRUGS, AND COSMETICS

- Chap. 1. General Provisions, 26-1-1.
2. Standards, Labeling, and Adulteration of Food, 26-2-1 through 26-2-413.
3. Standards, Labeling, and Adulteration of Drugs and Cosmetics, 26-3-1 through 26-3-24.
4. Pharmacists and Pharmacies, 26-4-1 through 26-4-179.
5. Drug Abuse Treatment and Education Programs, 26-5-1 through 26-5-20.

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**Cross references.** — Regulation of labeling, distribution, use, of pesticides, § 2-7-50 et seq. Controlled substances and dangerous drugs, Ch. 13, T. 16.

CHAPTER 1

GENERAL PROVISIONS

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26-1-1.	Maintenance of information and referral service for persons and	organizations desiring to donate food to nonprofit organizations; inspection of donated food.

**26-1-1. Maintenance of information and referral service for persons and organizations desiring to donate food to nonprofit organizations; inspection of donated food.**

(a) The Department of Agriculture shall maintain an information and referral service for persons and organizations which have notified the department of their desire to donate food to nonprofit organizations.

(b) Appropriate state and local departments and agencies are authorized to inspect donated food items for wholesomeness and may establish procedures for the handling of the food items. (Code 1933, § 105-1106, enacted by Ga. L. 1980, p. 69, § 1.)

<b>Cross references.</b> — Liability of persons donating food for use or distribution by nonprofit organizations, § 51-1-31.	tion by Compact: A Remedy for Preemption of State Food and Drug Laws,” see 14 J. Pub. L. 276 (1965).
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**Law reviews.** — For article, “Consolida-

RESEARCH REFERENCES

<b>ALR.</b> — Validity, construction, and application of the sampling provisions of the	Federal Food, Drug, and Cosmetic Act, or other similar acts, 155 ALR 910.
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## STANDARDS, LABELING, ADULTERATION OF FOOD

## CHAPTER 2

## STANDARDS, LABELING, AND ADULTERATION OF FOOD

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26-2-274.	Penalty; duty of prosecuting attorneys to prosecute violations.	26-2-332.	Use of signs or advertisements falsely representing food as Kosher food.
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26-2-290.	Definitions.	26-2-335.	Penalties for violations of article.
26-2-291.	Vitamins and ingredients in flour; specification changes; milling process.		<b>Article 12</b>
26-2-292.	Vitamins and ingredients in bread; specification changes.		<b>Soft Drinks</b>
26-2-293.	Vitamins and ingredients in degerminated corn meal and degerminated hominy grits; specification changes; milling process.	26-2-350.	Definitions.
26-2-294.	Exemptions.	26-2-351.	License for manufacture, bottling, and distribution; fee; separate license for each business or bottling or manufacturing plant.
26-2-295.	Labeling requirements.	26-2-352.	Sanitary standards and specifications for manufacture, bottling, and distribution of soft drinks or soft drink syrup; adoption; compliance with food laws.
26-2-296.	Duties of Commissioner of Agriculture.	26-2-353.	Promulgation of rules and regulations; administrative personnel.
26-2-297.	Penalty.	26-2-354.	Suspension or revocation of license; hearing.
	<b>Article 10</b>	26-2-355.	Sanitary inspection of building, area, structure, plant or vehicle used in manufacture, bottling, or distribution.
	<b>Fish and Other Seafoods</b>	26-2-356.	Applicability of article to dairy or milk processing or distributing plants otherwise licensed.
26-2-310.	Definitions.	26-2-357.	Penalty.
26-2-311.	Administration by Commissioner of Agriculture.		<b>Article 13</b>
26-2-312.	Wholesale fish dealers' licenses.		<b>Food Service Establishments</b>
26-2-313.	Applications for wholesale fish dealers' licenses.	26-2-370.	Definitions.
26-2-314.	License revocation.	26-2-371.	Permits — Required; issued by county board of health or De-
26-2-315.	Promulgation of rules and regulations regarding sanitation, distribution, and transportation of fish and seafoods.		
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## FOOD, DRUGS, AND COSMETICS

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- partment of Human Resources; validity; transferability; rules and regulations by municipalities.
- 26-2-372. Permits — Issuance; suspension, revocation, or denial; notice and hearing.
- 26-2-373. Promulgation of rules, regulations, and standards by Department of Human Resources and county boards of health; exemption for nonprofit schools and institutions which produce own milk.
- 26-2-373.1. Use of hair nets or hats by food preparers; penalty.
- 26-2-374. Contents and posting of notices relating to assistance to persons choking; relief from civil liability of persons rendering emergency aid.
- 26-2-375. Enforcement of article; inspection of food service and food sales establishments.
- 26-2-376. Review of final order or determination by Department of Human Resources; appeal to superior court.
- 26-2-377. Penalty for violation of article.
- 26-2-378. Meat products that contain ex-

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tenders to be displayed on menus or placards; applicability to minor amounts of extenders.

### Article 14

#### Nonprofit Food Sales and Food Service

- 26-2-390. Definitions.
- 26-2-391. Permits for nonprofit food sales and food service at events; duration of permit; issuance of subsequent permits.
- 26-2-392. Standards for food, labeling, and containers; protection from contamination; temperature; prohibited foods; utensils and equipment; ice; transport to other location; reuse at another event; handwashing facilities; unapproved facilities.
- 26-2-393. Enforcement of article.

### Article 15

#### Sale of Meat, Poultry, or Seafood from Mobile Vehicles

- 26-2-410. Definitions.
- 26-2-411. Licensing and inspection of mobile vehicles.
- 26-2-412. Rules and regulations.
- 26-2-413. Penalty for violations.

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**Administrative rules and regulations.** — General Rules, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Agriculture, Food Division Regulations, Chapter 40-7-1.

Additional Regulations Applicable to Salvageable Foods and Single Service Items, Official Compilation of the Rules and Regu-

lations of the State of Georgia, Georgia Department of Agriculture, Food Service Regulations, Chapter 40-7-2.

Additional Regulations Applicable to Corn Meal, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Agriculture, Food Division Regulations, Chapter 40-7-3.

## RESEARCH REFERENCES

**ALR.** — Products liability: sufficiency of evidence to support product misuse defense in actions concerning food, drugs, and other

products intended for ingestion, 58 ALR4th 7.



## ARTICLE 1

### GENERAL PROVISIONS

#### 26-2-1. Definitions of and standards for lard, mixed edible fats, and cottonseed oils.

The standards for lard, mixed edible fats, and cottonseed oils are defined as follows:

(1) “Lard” means the fat of freshly slaughtered swine. It shall not be made from a diseased animal or any portion of an animal unfit for food or contain less than 99 percent of pure fat.

(2) “Mixed edible fat” means a mixture which contains not less than 99 percent of sweet mixed fat and may consist of a mixture of refined cottonseed oil or other edible vegetable oils with sweet beef fat or other edible animal fat and shall be sold under a registered or proprietary brand and properly labeled with a distinctive trademark or name bearing the name of the manufacturer.

(3) “Edible cottonseed oil” means refined cottonseed oil, free from disagreeable taste or odors. White cottonseed oil for edible purposes is cottonseed oil which has been refined in such a manner as to be nearly colorless, flavorless, and odorless. Winter cottonseed oils for edible purposes are those from which a portion of the stearine has been removed; they may be either white or yellow. (Ga. L. 1906, p. 83, § 21; Civil Code 1910, § 2115; Code 1933, § 42-111; Ga. L. 1956, p. 195, § 23.)

### JUDICIAL DECISIONS

**Editor’s notes.** — In light of the similarity of the provisions, decisions under former Code 1910, §§ 2101, 2104, 2115, and 2117, are included in the annotations for this section.

**The purpose of the law against adulteration or misbranding is to protect consumers from deception or injury, and it is to be conclusively presumed that it was adopted to prevent injury to the public health by the sale and transportation in intrastate commerce of misbranded and adulterated foods.** *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929), *aff’d*, 37 F.2d 1014 (5th Cir. 1930) (decided under former Code 1910, § 2101).

**Products made wholly from vegetable oils,**

**water, salt, and harmless coloring matter** are not prohibited from being sold by former Code 1910, § 2115 (see O.C.G.A. § 26-2-1). *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929), *aff’d*, 37 F.2d 1014 (5th Cir. 1930) (decided under former Code 1910, § 2115).

**Jurisdiction of federal court to enjoin wrongful confiscation of food products and prosecutions for violating Code 1910, § 2117** (see O.C.G.A. § 26-2-1), see *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929), *aff’d*, 37 F.2d 1014 (5th Cir. 1930) (decided under former Code 1910, § 2117).

**Cited in** *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929).

RESEARCH REFERENCES

- C.J.S. — 36A C.J.S., Food, § 15.                      peril that articles of food conform to food  
ALR. — Seller's duty to ascertain at his                      regulations, 28 ALR 1385.

**26-2-2. Meat, fish, and poultry to be sold by net weight; exceptions; penalty.**

(a) All meat, meat products, fish, and poultry offered or exposed for sale or sold commercially shall be sold by net weight only except when sold for immediate consumption on the premises or when sold as a cooked food but not in a package or when sold for breeding purposes or when sold as pets or for other purposes than for human or animal consumption.

(b) Any person who violates this Code section shall be guilty of a misdemeanor. (Ga. L. 1956, p. 75, §§ 1, 2.)

RESEARCH REFERENCES

- Am. Jur. 2d. — 35A Am. Jur. 2d, Food,                      ALR. — Penal offense predicated upon  
§ 21 et seq.                      violation of food law as affected by ignorance  
C.J.S. — 36A C.J.S., Food, §§ 12, 15, 16,                      or mistake of fact, lack of criminal intent, or  
23.                      presence of good faith, 152 ALR 755.

**26-2-3. Obstruction of inspectors and others in performance of duties.**

Any manufacturer, dealer, or other person who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent any inspector or other person in the performance of his duty in collecting samples or otherwise in connection with this chapter shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than \$10.00 nor more than \$50.00. Any violation of this chapter, relating to feeding stuffs for domestic animals, shall be punished by a fine not exceeding \$50.00 or imprisonment not exceeding 30 days, or both, in the discretion of the court. (Ga. L. 1906, p. 83, § 20; Penal Code 1910, § 452; Code 1933, § 42-9905.)

RESEARCH REFERENCES

- ALR. — Penal offense predicated upon                      or mistake of fact, lack of criminal intent, or  
violation of food law as affected by ignorance                      presence of good faith, 152 ALR 755.

**26-2-4. Labeling, sale, or advertising of spring water.**

(a) As used in this Code section, the term “spring water” means water which is: (1) derived from an underground formation from which water flows naturally to the surface of the earth; (2) not derived from a municipal system or public water supply; and (3) collected only at the spring or through a bore hole into the same underground water-bearing zone; provided, however, water collected with the assistance of external force to

protect the water shall retain all the physical properties of and be of the same chemical composition and quality as the water that flows naturally to the surface.

(b) Any water which meets the definition of “spring water” as specified in subsection (a) of this Code section may lawfully be labeled, sold, advertised, and otherwise represented as “spring water” or “natural spring water,” notwithstanding any other contrary provision of any law or regulation of this state. No law or regulation of this state shall: (1) require or be construed to require any disclaimer in connection with such labeling, sale, advertisement, or representation; or (2) require or be construed to require such water to be additionally identified as any other type of water. (Code 1981, § 26-2-4, enacted by Ga. L. 1992, p. 1016, § 1.)

## ARTICLE 2

### ADULTERATION AND MISBRANDING OF FOOD

**Cross references.** — Authority of Commissioner of Agriculture to impose penalty in lieu of other action, § 2-2-10. Powers and duties of Commissioners with regard to use,

and advertisement of weights and measures pertaining to commodities generally, § 10-2-1 et seq.

## JUDICIAL DECISIONS

**Purpose of O.C.G.A. Title 26, Chapter 2, Article 2.** — O.C.G.A. Title 26, Chapter 2, Article 2, the “Georgia Food Act”, is a consumer protection Act, designed not to render the workplace a safe environment, but to prevent the sale and distribution of adulterated or misbranded foods to consumers. While safety in the workplace and compensation for injuries arising out of work activities are indeed matters of contemporary concern, they are the subject of other legislative enactments on both the state and federal level. *Potts v. Fidelity Fruit & Produce Co.*, 165 Ga. App. 546, 301 S.E.2d 903 (1983).

**Determining if violation is negligence per se.** — In determining whether the violation of a statute or ordinance, such as O.C.G.A. Title 26, Chapter 2, Article 2, is negligence per se as to a particular person, it is necessary to examine the purposes of the legislation and decide: (1) whether the injured person falls within the class of persons it was intended to protect; and (2) whether the

harm complained of was the harm it was intended to guard against. *Potts v. Fidelity Fruit & Produce Co.*, 165 Ga. App. 546, 301 S.E.2d 903 (1983).

**Injuries sustained other than in consumption of food not actionable under O.C.G.A. Title 26, Chapter 2, Article 2.** — Where plaintiff brought action to recover for personal injuries which plaintiff allegedly sustained when bitten by a spider while unloading bananas from a truck and the incident occurred during the course of plaintiff’s employment, because the alleged injuries did not arise incident to plaintiff’s consumption of the bananas, the trial court was correct in concluding that O.C.G.A. Title 26, Chapter 2, Article 2 affords the plaintiff no basis for recovery. *Potts v. Fidelity Fruit & Produce Co.*, 165 Ga. App. 546, 301 S.E.2d 903 (1983).

**Cited in** *Foster v. Georgia Bd. of Chiropractic Exmrs.*, 257 Ga. 409, 359 S.E.2d 877 (1987).



**26-2-20. Short title.**

This article may be cited as the “Georgia Food Act.” (Ga. L. 1956, p. 195, § 1.)

**26-2-21. Definitions.**

(a) As used in this article, the term:

(1) “Commissioner” means the Commissioner of Agriculture.

(2) “Contaminated with filth” applies to any food not securely protected from dust, dirt, and, as far as may be necessary, by all reasonable means, from all foreign or injurious contamination.

(3) “Federal act” means the Federal Food, Drug, and Cosmetic Act (Title 21 U.S.C. Section 301, et seq., 52 Stat. Section 1040, et seq.).

(4) “Food” means:

(A) Articles used for food or drink for human consumption;

(B) Chewing gum; and

(C) Articles used for components of any such articles.

(5) “Food sales establishment” means retail and wholesale grocery stores; retail seafood stores and places of business; food processing plants, except those food processing plants which are currently required to obtain a license from the Commissioner under any other provision of law; bakeries; confectioneries; fruit, nuts, and vegetable stores or roadside stands; wholesale sandwich and salad manufacturers, including vending machines and operations connected therewith; and places of business and similar establishments, mobile or permanent, engaged in the sale of food primarily for consumption off the premises. Within a food sales establishment, there may be a food service component, not separately operated, which may serve customers on site. This food service component shall be considered as part of the food sales establishment. The food sales component of any food service establishment defined in Code Section 26-2-370 shall not be included in this definition. This term shall not include “food service establishments” as defined in Code Section 26-2-370. This term also shall not include establishments engaged in the sale of food primarily for consumption off the premises if such sale is an authorized part of and occurs upon the site of a fair or festival which:

(A) Is sponsored by a political subdivision of this state or by an organization exempt from taxes under paragraph (1) of subsection (a) of Code Section 48-7-25 or under Section 501(d) or paragraphs (1) through (8) or paragraph (10) of Section 501(c) of the Internal Revenue Code, as that code is defined in Code Section 48-1-2;

(B) Lasts 120 hours or less; and

(C) When sponsored by such an organization, is authorized to be conducted pursuant to a permit issued by the municipality or county in which it is conducted.

(6) “Immediate container” does not include package liners.

(7) “Label” means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under the authority of this article that any word, statement, or other information appear on the label shall not be considered to be complied with unless each such word, statement, or other information also appears on the outside wrapper or container, if there is any, of the retail package of such article, or is easily legible through the outside container or wrapper.

(8) “Labeling” means all labels and other written, printed, or graphic matter upon an article or any of its containers or wrappers or accompanying such article.

(9) “Official compendium” means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

(10) “Person” means an individual, partnership, corporation, or association or any combination thereof.

(b) The provisions of this article regarding the selling of food shall be considered to include the manufacture, production, packaging, offer, exposure, possession, and holding of any such articles and the supplying or applying of any such articles in the conduct of any food establishment. (Ga. L. 1956, p. 195, § 2; Ga. L. 1971, p. 66, § 1; Ga. L. 1992, p. 1174, § 1; Ga. L. 1998, p. 1220, § 1; Ga. L. 2000, p. 1558, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1992, “confectioneries” was substituted for “confectionaries” in the introductory language of paragraph (a)(5).

Pursuant to Code Section 28-9-5, in 1996, a comma was inserted in two places in paragraph (a)(3).

## OPINIONS OF THE ATTORNEY GENERAL

**Editor’s notes.** — In light of the similarity of the provisions, opinions under Ga. L. 1956, p. 195, are included in the annotations for this section.

**Beer, wine, and distilled spirits manufactured for beverage purposes** are “food” within the meaning of Ga. L. 1956, p. 195, § 2 (see O.C.G.A. Title 26, Chapter 2, Article 2) and establishments manufacturing

such articles are subject to inspection by the Department of Agriculture for compliance with the sanitary requirements of those provisions. 1970 Op. Att’y Gen. No. 70-60.

**State and federal alcohol labeling laws may supersede O.C.G.A. § 26-2-21.** — Laws administered by the State Revenue Commissioner, the Secretary of the Treasury, and the Food and Drug Administration, regarding

the labeling of beer, wine, and distilled spirits may supersede certain other provisions of this title. 1970 Op. Att'y Gen. No. 70-60.

**A label on package of meat, in order to comply with Ga. L. 1956, p. 195 (see O.C.G.A. § 26-2-21), must contain the name and place of business of the specific establishment where the food is packaged;** merely placing the name of a retail food chain and the home office city on a label would not comply with those provisions. 1973 Op. Att'y Gen. No. 73-98.

**Food retailers with seating facilities subject to O.C.G.A. § 26-2-21.** — Food sales

establishments defined in by Ga. L. 1956, p. 195 (see O.C.G.A. § 26-2-21(a)(5)) providing seats and other conveniences within its premises for customers to use in eating food purchased in that store shall be subject to inspection as a "food service establishment," as defined in former Code 1933, § 88-1001 (see O.C.G.A. § 26-2-370). 1978 Op. Att'y Gen. No. 78-65.

**The provisions of Ga. L. 1956, p. 195 (see O.C.G.A. § 26-2-28) apply to bottled soft drinks.** 1958-59 Op. Att'y Gen. p. 7 (decided under Ga. L. 1956, p. 195).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 32 Am. Jur. 2d, False Pretenses, § 88. 35A Am. Jur. 2d, Food, §§ 25, 26. 37 Am. Jur. 2d, Fraud and Deceit, § 79.

**C.J.S.** — 36A C.J.S., Food, §§ 1, 12, 23.

**ALR.** — What is "food" within meaning of statute, 17 ALR 1282.

Statutes or ordinances in relation to confectionery, 58 ALR 293.

Provisions of statutes against misbranding or false labeling of food, drug, or cosmetic products, as applicable to literature other than that attached to product itself, 143 ALR 1453.

### 26-2-22. Prohibited acts.

The following acts and the causing thereof within this state are prohibited:

(1) The manufacture, sale or delivery, holding, storage, or offering for sale of any food that is adulterated or misbranded;

(2) The adulteration or misbranding of any food;

(3) The receipt in commerce of any food that is adulterated or misbranded and the delivery or proffered delivery thereof for pay or otherwise;

(4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of Code Section 26-2-37;

(5) The dissemination of any false advertisement;

(6) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by Code Section 26-2-36;

(7) The giving of a guaranty or undertaking, which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of, the person residing in the State of Georgia from whom he received in good faith the food;

(8) The removal or disposal of a detained or embargoed article in violation of Code Section 26-2-38;



(9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of or the doing of any other act with respect to a food, if such act is done while such article is held for sale and results in such article being adulterated or misbranded;

(10) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated pursuant to this article; and

(11) The operation of a food sales establishment in violation of Code Section 26-2-25. (Ga. L. 1956, p. 195, § 3; Ga. L. 1971, p. 66, § 2; Ga. L. 1984, p. 22, § 26; Ga. L. 1985, p. 149, § 26.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1985, a comma was deleted following “using” in paragraph (10).

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION

1. LEGISLATIVE INTENT
2. APPLICABILITY
3. FEDERAL JURISDICTION
4. INDICTMENT
5. STANDARDS OF CARE AND NEGLIGENCE

#### General Consideration

**Editor's notes.** — In light of the similarity of the provisions, decisions under former Code 1910, §§ 2101, 2104, 2115 and 2117, and former Code 1933, §§ 42-109, 42-115, and 42-9901, are included in the annotations for this section.

**The Pure-Food and Drug Act of 1906, Code 1933, § 42-109 (see O.C.G.A. § 26-2-26), did not change or repeal the common-law rule as stated in former Code 1933, § 105-1101 (see O.C.G.A. § 51-1-23).** *Criswell Baking Co. v. Milligan*, 77 Ga. App. 861, 50 S.E.2d 136 (1948) (decided under former Code 1933, §§ 42-109(7) and 42-9901).

**Immunity for inspectors.** — Inspectors for the consumer protection division who informed a public warehouseman that the pecans stored at its warehouse were unfit for human consumption without destroying the condemned pecans expeditiously nor notifying the holders of a security interest in the pecans of the condemnation owed no duty to the holders of the security interest under the Georgia Food Act, O.C.G.A. § 26-2-20.

The injury that the holders suffered in losing their security was not the type of injury the Georgia Food Act was designed to prevent. *Planters & Citizens Bank v. Pennsylvania Millers Mut. Ins. Co.*, 786 F. Supp. 991 (S.D. Ga. 1992), *aff'd*, 992 F.2d 328 (11th Cir. 1993).

**Cited in** *Chambley v. Apple Restaurants, Inc.*, 233 Ga. App. 498, 504 S.E.2d 551 (1998).

#### 1. Legislative Intent

**The purpose of the law against adulteration or misbranding is to protect consumers from deception or injury, and it is to be conclusively presumed that it was adopted to prevent injury to the public health by the sale and transportation in intrastate commerce of misbranded and adulterated foods.** *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929), *aff'd*, 37 F.2d 1014 (5th Cir. 1930) (decided under former Code 1910, § 2101).

#### 2. Applicability

**No liability if substance not added to food.** — Code 1910, § 2103 (see O.C.G.A.

**General Consideration (Cont'd)****2. Applicability (Cont'd)**

§ 26-2-26(1) and (2)), is not applicable where the contention is not that the defendant had adulterated the product by adding some deleterious foreign substance to the normal constituency of the product in order to sell it as a part of the product itself, but where the charge only contends that the defendant was negligent in allowing the normal ingredients of the product to become putrid and unwholesome. *Armour & Co. v. Miller*, 39 Ga. App. 228, 147 S.E. 184 (1929) (decided under former Code 1910, § 2103).

**Products made wholly from vegetable oils, water, salt, and harmless coloring matter are not prohibited** from being sold by former Code 1910, § 2115 (see *O.C.G.A.* § 26-2-22). *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929), aff'd, 37 F.2d 1014 (5th Cir. 1930) (decided under former Code 1910, § 2115).

**Product sometimes used as butter substitute.** — A product cannot be banned merely because it is sometimes used as a substitute for creamery butter without being declared to be such. *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929), aff'd, 37 F.2d 1014 (5th Cir. 1930) (decided under former Code 1910, § 2104).

**If it is not so misbranded as to deceive or so adulterated as to injure.** — The law does not prohibit the sale of substitutes for creamery butter, provided the substitute is not sold so misbranded as to deceive or so adulterated as to injure. *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929), aff'd, 37 F.2d 1014 (5th Cir. 1930) (decided under former Code 1910, § 2101).

**3. Federal Jurisdiction**

**Jurisdiction of federal court to enjoin wrongful confiscation of food products and prosecutions for violating Code 1910, § 2101** (see *O.C.G.A.* § 26-2-22), see *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929), aff'd, 37 F.2d 1014 (5th Cir. 1930) (decided under former Code 1910, § 2117).

**4. Indictment**

**Indictment sufficient.** — An indictment charging that the defendant unlawfully sold

"adulterated food," in that defendant sold to a named person "a portion of an animal, to wit, a diseased cow, unfit for food, that had died otherwise than by slaughter," was not subject to demurrer (now motion to dismiss) because of failure to show compliance with statutory provisions as to examination of food by or under the direction of the state chemist. *Evitt v. State*, 23 Ga. App. 532, 98 S.E. 737 (1919) (decided under former Code 1910, § 2102).

**Indictment not subject to demurrer (now motion to dismiss)** because of failure to show how or in what way a portion sold was unfit for food, or was diseased, or what kind of product of the diseased cow was sold. *Evitt v. State*, 23 Ga. App. 532, 98 S.E. 737 (1917) (decided under former Code 1910, § 2102).

**5. Standards of Care and Negligence**

**Plaintiff must show knowledge or negligence by food retailer.** — In a suit for damages against a seller of unwholesome food which injures the plaintiff, it is still necessary to prove that the defendant either knew of the unwholesome condition of the food or was guilty of negligence in the transaction. *Criswell Baking Co. v. Milligan*, 77 Ga. App. 861, 50 S.E.2d 136 (1948) (decided under former Code 1933, §§ 42-109 and 42-9901).

**Plaintiff need only show negligence as matter of law, and not of fact.** — Where before passage of the Pure-Food and Drug Act of 1906, Code 1933, § 42-109 (see *O.C.G.A.* § 26-2-26), an action for damages resulting from negligence could be sustained only by proof of such negligence as a matter of fact, according to the standard of ordinary prudence as applied to the circumstances, now the plaintiff may show negligence as a matter of law by establishing a breach of the statutory duty, or a plaintiff may rely on both classes of negligence, according to the facts; in other words, the Pure-Food and Drug Act of 1906, Code 1933, § 42-109 (see *O.C.G.A.* § 26-2-26), did not affect the nature or basis of the cause of action, but related only to the standard of care by which negligence could be determined. *Criswell Baking Co. v. Milligan*, 77 Ga. App. 861, 50 S.E.2d 136 (1948) (decided under former Code 1933, § 2-109).

**Plaintiff can invoke section to show negligence as matter of law.** — While the



Pure-Food and Drug Act of 1906, Code 1933, § 42-109 (see O.C.G.A. § 26-2-26), was designed to protect the public, and did not expressly set forth duties to individual consumers, the plaintiff as a member of the public could invoke its provisions to show negligence as a matter of law, if injured by the violation of a duty imposed by the law. *Criswell Baking Co. v. Milligan*, 77 Ga. App. 861, 50 S.E.2d 136 (1948) (decided under former Code 1933, §§ 42-109 and 42-9901).

**By showing breach of statutory duty.** — The plaintiffs, charging defendant with a breach of legal duty in manufacturing and selling pie which they contended was unwholesome and putrid, so that they were injured and damaged by eating the same, since the enactment of the former Pure-Food and Drug Act of 1906, Code 1933, § 42-109 (see O.C.G.A. § 26-2-26), could show negligence as a matter of law by establishing a breach of the statutory duty. *Criswell Baking Co. v. Milligan*, 77 Ga. App. 861, 50 S.E.2d 136 (1948) (decided under former Code 1933, §§ 42-109 and 42-9901).

**Sale of adulterated article which causes illness is negligence per se.** — Sale of an adulterated article to a customer who is made ill by its consumption, in violation of Code 1933, § 42-109 (see O.C.G.A. § 26-2-26), constituted negligence per se. *Donaldson v. Great Atl. & Pac. Tea Co.*, 59 Ga. App. 79, 200 S.E. 498 (1938) (decided under former Code 1933, §§ 42-109, 42-115, 42-9901, and 42-9906).

**Such as when retailer liable for not having manufacturer's guarantee of wholesomeness.** — A retail dealer who sold adulterated food, the sale of which was prohibited by the former Code 1933, § 42-109 (see O.C.G.A. § 26-2-26), who had not established a guaranty from the manufacturer as provided in Code 1933, § 42-115 (see O.C.G.A. § 26-2-24), that the article was not adulterated within the meaning of Code 1933, § 42-109 (see O.C.G.A. § 26-2-26), although the dealer had no knowledge of the unfit condition of the article sold and was not negligent with respect thereto, would be liable in damages to the person made sick from eating such food without fault on the plaintiff's part. *Donaldson v. Great Atl. & Pac. Tea Co.*, 59 Ga. App. 79, 200 S.E. 498 (1938) (decided under former Code 1933, §§ 42-109, 42-115, 42-9901, and 42-9906).

**Ordinary care is no defense, in that violation of section constitutes negligence per se.**

— On the trial of a suit against a dealer by a person alleged to have been made ill from eating alleged adulterated food sold by the defendant, the sale of which was made penal under Code 1933, §§ 42-109 and 42-9901 (see O.C.G.A. § 26-2-26), which was negligence per se, where the evidence authorized an inference that the food was unfit, decomposed, or putrid and was therefore unfit for human consumption and adulterated as defined in the title, and that the plaintiff was made sick from eating the food, it was error for the court to instruct the jury that if the defendant exercised ordinary care in connection with the sale of the food the plaintiff could not recover. *Donaldson v. Great Atl. & Pac. Tea Co.*, 59 Ga. App. 79, 200 S.E. 498 (1938) (decided under former Code 1933, §§ 42-109, 42-115, 42-9901, and 42-9906).

**Plaintiff can establish negligence per se as matter of law, and/or negligence as matter of fact.** — In a suit for damages against a seller of unwholesome food, the plaintiff may establish negligence as a matter of fact, or plaintiff may show negligence as a matter of law by establishing a breach of a statutory duty imposed by the provisions of the pure food and drug laws, Code 1933, § 42-109 (see O.C.G.A. § 26-2-26), or plaintiff may rely on both classes of negligence. *Norris v. Pig'n Whistle Sandwich Shop, Inc.*, 79 Ga. App. 369, 53 S.E.2d 718 (1949) (decided under former Code 1933, § 42-109).

**When dealer with manufacturer's guarantee of wholesomeness still liable for negligence as matter of fact, if not per se.** — Under Code 1933, § 42-115 (see O.C.G.A. § 26-2-24), a dealer selling food adulterated within the meaning of that statute would not violate its provisions, and therefore would not be guilty of negligence per se, if the dealer had obtained a guaranty of wholesomeness from the manufacturer but the guaranty would not relieve the dealer from the liability referred to in O.C.G.A. § 51-1-23, if the dealer is negligent as a matter of fact in selling unwholesome food which injures another. It follows that Code 1933, § 42-115 (see O.C.G.A. § 26-2-24), merely creates an exception to the statute in favor of those who obtain the guaranty. *Burns v. Colonial Stores, Inc.*, 90 Ga. App. 492, 83 S.E.2d 259 (1954) (decided under former Code 1933, §§ 42-109 and 42-115).



## OPINIONS OF THE ATTORNEY GENERAL

**Candy that contains a small quantity of bourbon flavor or is bourbon flavored is adulterated.** 1957 Op. Att'y Gen. p. 144.

## RESEARCH REFERENCES

**ALR.** — Seller's duty to ascertain at his peril that articles of food conform to food regulations, 28 ALR 1385.

Preservative as adulterant within statute in relation to food, 50 ALR 76.

Validity, construction, and application of statutes or ordinances directed against false or fraudulent statements in advertisements, 89 ALR 1004.

Constitutionality of statutes, ordinances or other regulations against adulteration of food products as applied to substances used for preservative purposes, 114 ALR 1214.

Validity, construction, and application of statutes or ordinances relating to inspection of food sold at retail, 127 ALR 322.

Knowledge or actual negligence on part of seller which is not an element of criminal offense under penal statute relating to sale of unfit food or other commodity, as condition of civil action in tort in which violation of the statute is relied upon as negligence per se or evidence of negligence, 128 ALR 464.

Implied warranty of fitness by one serving food, 7 ALR2d 1027; 87 ALR4th 804; 90 ALR4th 12.

Recovery for loss of business resulting from resale of unwholesome food or beverages furnished by another, 17 ALR2d 1379.

Construction and application of Federal Food, Drug, and Cosmetic Act § 402 (a)(3) [21 USC § 342 (a) (3)] as to food deemed "adulterated," if it is filthy or the like, or unfit for food, 45 ALR2d 861.

Validity and construction of regulations dealing with misrepresentation in the sale of Kosher food, 52 ALR3d 959.

Liability of packer, foodstore, or restaurant for causing trichinosis, 96 ALR3d 451.

Liability for injury or death allegedly caused by foreign object in food or food product, 1 ALR5th 1.

Liability for injury or death allegedly caused by spoilage, contamination, or other deleterious condition of food or food product, 2 ALR5th 1.

Liability for injury or death allegedly caused by food product containing object related to, but not intended to be present in, product, 2 ALR5th 189.

**26-2-23. Injunctions for violations of Code Section 26-2-22.**

In addition to the remedies provided for in this article, the Commissioner is authorized to apply to the superior court of the appropriate county for an injunction. Such court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating Code Section 26-2-22, notwithstanding the existence of an adequate remedy at law. (Ga. L. 1956, p. 195, § 4.)

## RESEARCH REFERENCES

**C.J.S.** — 36A C.J.S., Food, § 29.

**26-2-24. Penalty for violation of Code Section 26-2-22; exceptions.**

Any person who violates Code Section 26-2-22 shall be guilty of a misdemeanor, provided that:

(1) No person shall be subject to the penalties provided in this article for having violated paragraph (1) or (3) of Code Section 26-2-22 if he or she establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in this state from whom he or she received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this article and designating this article;

(2) No publisher, radiobroadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this Code section by reason of the dissemination by him or her of such false advertisement unless he or she has refused, on the request of the Commissioner, to furnish the Commissioner the name and post office address of the manufacturer, packer, distributor, seller, or advertising agency who caused him or her to disseminate such advertisement; and

(3) If the removal or disposal of a detained or embargoed article creates a significant eminent threat or danger to human health, any person who violates paragraph (8) of Code Section 26-2-22 by removing or disposing of such detained or embargoed article and introducing or attempting to introduce said article into commerce for the purpose of human consumption or processing for human consumption in violation of Code Section 26-2-38 shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one nor more than two years. (Ga. L. 1956, p. 195, § 5; Ga. L. 1998, p. 189, § 1.)

**JUDICIAL DECISIONS**

**Editor's notes.** — In light of the similarity of the provisions, decisions under former Code 1933, §§ 42-109, 42-115, 42-9901, and 42-9906, are included in the annotations for this section.

**Dealer with manufacturer's guaranty not negligent per se but can be negligent as matter of fact.** — Under Code 1933, § 42-115 (see O.C.G.A. § 26-2-24), relating to guaranties of manufacturers, a dealer selling food which is adulterated within the meaning of the statute would not violate its provisions, and therefore would not be guilty of negligence per se, if the dealer had obtained the prescribed guaranty; but the guaranty would not relieve the dealer from the

liability referred to in O.C.G.A. § 51-1123 if the dealer is negligent as a matter of fact in selling unwholesome food by the use of which another is injured. It follows that Code 1933, § 42-115 (now O.C.G.A. § 26-2-24), merely creates an exception to the statute in favor of those who obtain and establish the guaranty. *Burns v. Colonial Stores, Inc.*, 90 Ga. App. 492, 83 S.E.2d 259 (1954) (decided under former Code 1933, §§ 42-109 and 42-115).

**Dealer without guaranty liable for illness, though without knowledge of food's unfitness.** — A retail dealer who sold adulterated food, the sale of which was prohibited by Code 1933, § 42-109 (see O.C.G.A.

§ 26-2-26), where the dealer had not established a guaranty from the manufacturer as provided in Code 1933, § 42-115 (see O.C.G.A. § 26-2-24) to the effect that the article was not adulterated within the meaning of Code 1933, § 42-109 (see O.C.G.A. § 26-2-26), although the dealer had no knowledge of the unfit condition of the

article sold and was not negligent with respect thereto, would be liable in damages to the person made sick from eating such food without fault on the person's part. *Donaldson v. Great Atl. & Pac. Tea Co.*, 59 Ga. App. 79, 200 S.E. 498 (1938) (decided under former Code 1933, §§ 42-109, 42-115, 42-9901 and 42-9906).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 68. 74 Am. Jur. 2d, Telecommunications, § 188.

**C.J.S.** — 36A C.J.S., Food, §§ 12, 40.

**ALR.** — Seller's duty to ascertain at his peril that articles of food conform to food regulations, 28 ALR 1385.

Penal offense predicated upon violation of food law as affected by ignorance or mistake of fact, lack of criminal intent, or presence of good faith, 152 ALR 755.

Liability of packer, foodstore, or restaurant for causing trichinosis, 96 ALR3d 451.

#### **26-2-25. Licensing of food sales establishments; revocation; notice and hearing; transferability; fee; posting of license.**

It shall be unlawful for any person to operate a food sales establishment without having first obtained a license from the Commissioner. No license issued under this article shall be suspended or revoked except for health and sanitation reasons or violations of this article and until the licensee to be affected shall be provided with reasonable notice thereof and an opportunity for hearing, as provided under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Licenses issued under this article shall be valid until suspended or revoked and shall not be transferable with respect to persons or location. There shall be no fee for such license. Each food sales establishment licensed pursuant to this Code section shall post such license on the premises in an open and conspicuous manner so as to be visible to the public. Neither the state nor any county, municipality, or consolidated government shall issue or renew any business or occupation license or permit for any food sales establishment until the establishment complies with the requirements of this article. (Ga. L. 1971, p. 66, § 3; Ga. L. 2002, p. 815, § 1.)

**The 2002 amendment**, effective July 1, 2002, added the last two sentences in this Code section.

#### RESEARCH REFERENCES

**ALR.** — Validity of statute or ordinance relating to place of sale of food, 52 ALR 669.  
Application of occupation, sales, or li-

cense tax to one operating dining room, cafeteria, or beverage room incidental to business, 13 ALR2d 1362.



**26-2-26. When food deemed adulterated.**

A food shall be deemed to be adulterated if:

(1) It bears or contains any poisonous or deleterious substance which may render it injurious to health; but, in case the substance is not an added substance, such food shall not be considered adulterated under this paragraph if the quantity of such substance in such food does not ordinarily render it injurious to health;

(2) It bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of Code Section 26-2-27. In regard to pesticide residues, a food shall be deemed to be adulterated and unsafe if it bears a pesticide residue in excess of a tolerance established by the United States Environmental Protection Agency under the Federal Food, Drug, and Cosmetic Act or if it bears a residue of a pesticide for which no tolerance has been established or is currently in effect for that food, if such residue appears at a level which is readily quantifiable by methods of assay for pesticide residues employed by the Commissioner on the date of the assay;

(3) It consists in whole or in part of a diseased or contaminated, filthy, putrid, or decomposed substance or if it is otherwise unfit for food;

(4) It has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered diseased, unwholesome, or injurious to health;

(5) It is the product of a diseased animal or an animal that has died otherwise than by slaughter or an animal that has been fed upon the uncooked offal from a slaughterhouse;

(6) Its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health;

(7) Any valuable constituent has been in whole or in part omitted or abstracted therefrom;

(8) Any substance has been substituted wholly or in part therefor;

(9) Damage or inferiority has been concealed in any manner;

(10) Any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight or reduce its quality or strength or make it appear better or of greater value than it is;

(11) It is confectionary and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of 1 percent, harmless natural wax not in excess of four-tenths of 1 percent,

harmless natural gum, and pectin, provided that this paragraph shall not apply to any confection containing less than one-half of 1 percent by volume of alcohol derived solely from the use of flavoring extracts or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances; or

(12) It bears or contains a coal-tar color other than one from a batch which has been certified under authority of the federal act. (Ga. L. 1956, p. 195, § 10; Ga. L. 1990, p. 8, § 26; Ga. L. 1990, p. 318, § 1.)

**Cross references.** — Warranties relating to sales of goods generally, § 11-2-312 et seq. Civil action for knowing or negligent selling

of unwholesome provisions to another person by use of which damage results to purchaser or his family, § 51-1-23.

## JUDICIAL DECISIONS

### ANALYSIS

1. GENERAL CONSIDERATION
2. LEGISLATIVE INTENT
3. APPLICABILITY AND DEFINITION OF ADULTERATED FOOD
4. JURISDICTION
5. INDICTMENT
6. STANDARDS OF NEGLIGENCE

#### 1. General Consideration

**Editor's notes.** — In light of the similarity of the provisions, decisions under former Code 1910, §§ 2101, 2104, 2115 and 2117, and former Code 1933, §§ 42-109, 42-115, 42-9901 and 42-9906 are included in the annotations for this section.

**Establishing injury.** — In a negligence action by a restaurant customer who found an unwrapped condom in a salad, summary judgment was precluded by fact issues as to whether eating part of the salad was sufficient physical contact under the impact rule, and whether the customer's reaction of vomiting and becoming nauseated constituted a physical injury. *Chambley v. Apple Restaurants, Inc.*, 233 Ga. App. 498, 504 S.E.2d 551 (1998).

**Cited in** *Polite v. Carey Hilliards Restaurants, Inc.*, 177 Ga. App. 170, 338 S.E.2d 541 (1985).

#### 2. Legislative Intent

**The purpose of the law** against adulteration or misbranding is to protect consumers from deception or injury, and it is to be conclusively presumed that it was adopted to prevent injury to the public health by the sale and transportation in intrastate com-

merce of misbranded and adulterated foods. *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929), *aff'd*, 37 F.2d 1014 (5th Cir. 1930) (decided under former Code 1910, § 2101).

#### 3. Applicability and Definition of Adulterated Food

**No liability for substance not added to food.** — Former Code 1910, § 2103 (see O.C.G.A. § 26-2-26(1) and (2)), is not applicable, where the contention is not that the defendant had adulterated the product by adding some deleterious foreign substance to the normal constituency of the product in order to sell it as part of the product itself, but where the charge only contends that the defendant was negligent in allowing the normal ingredients of the product to become putrid and unwholesome. *Armour & Co. v. Miller*, 39 Ga. App. 228, 147 S.E. 184 (1929) (decided under former Code 1910, § 2103).

**Butter substitutes.** — The law does not prohibit the sale of substitutes for creamery butter, provided the substitute is not sold so misbranded as to deceive or so adulterated as to injure. *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929),

aff'd, 37 F.2d 1014 (5th Cir. 1930) (decided under former Code 1910, § 2101).

**Products made wholly from vegetable oils, water, salt, and harmless coloring matter are not prohibited** from being sold by former Code 1910, § 2115 (see O.C.G.A. § 26-2-26). *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929), aff'd, 37 F.2d 1014 (5th Cir. 1930) (decided under former Code 1910, § 2115).

**"Southern nut product,"** was held a "distinctive" name, not an imitation of creamery butter and not adulterated. *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929), aff'd, 37 F.2d 1014 (5th Cir. 1930) (decided under former Code 1910, § 2104).

**Definition of "adulterated food".** — Food is adulterated, within the meaning of Code 1933, § 42-109 (see O.C.G.A. § 26-2-26), if it contains something "foreign" or "added," or if the object is a "portion of an animal unfit for food." *Davison-Paxon Co. v. Archer*, 91 Ga. App. 131, 85 S.E.2d 182 (1954) (decided under former Code 1933, § 42-109).

**Includes decomposed food.** — Any portion of an animal, such as pig's liver, which is decomposed or putrid, is adulterated and unfit for food. *Donaldson v. Great Atl. & Pac. Tea Co.*, 59 Ga. App. 79, 200 S.E. 498 (1938) (decided under former Code 1933, §§ 42-109 and 42-9906).

**Although bone not "portion unfit for food" requiring submission of case to jury as negligence per se.** — A barbecued pork sandwich, which contained a small piece of bone which the plaintiff got caught in plaintiff's throat, contained nothing that would render it unfit for food within the provisions of Code 1933, § 42-109, subdivision 7 (see O.C.G.A. § 26-2-26), as containing a "portion of animal unfit for food," and the defendant could not be charged with negligence per se in the violation of this statute so as to require the submission of the case to a jury. *Norris v. Pig'n Whistle Sandwich Shop, Inc.*, 79 Ga. App. 369, 53 S.E.2d 718 (1949) (decided under former Code 1933, § 42-109).

#### 4. Jurisdiction

**Jurisdiction of federal court to enjoin wrongful confiscation of food products and prosecutions for violating Code 1910, § 2101** (see O.C.G.A. § 26-2-22), see *Balti-*

*more Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929), aff'd, 37 F.2d 1014 (5th Cir. 1930) (decided under former Code 1910, § 2117).

#### 5. Indictment

**Indictment sufficient.** — An indictment charging that the defendant unlawfully sold "adulterated food," in that defendant sold to a named person "a portion of an animal, to wit, a diseased cow, unfit for food, that had died otherwise than by slaughter," was not subject to demurrer (now motion to dismiss) because of failure to show compliance with statutory provisions as to examination of food by or under the direction of the state chemist. *Evitt v. State*, 23 Ga. App. 532, 98 S.E. 737 (1919) (decided under former Code 1910, § 2102).

**Indictment not subject to demurrer (now motion to dismiss)** because of failure to show how or in what way the portion sold was unfit for food, or was diseased, or what kind of product of the diseased cow was sold. *Evitt v. State*, 23 Ga. App. 532, 98 S.E. 737 (1919) (decided under former Code 1910, § 2102).

#### 6. Standards of Negligence

**Sale of adulterated food which causes illness is negligence per se.** — Sale of an adulterated article to a customer who is made ill by its consumption, in violation of Code 1933, §§ 42-109, 42-115, 42-9901 and 42-9906 (see O.C.G.A. § 26-2-26), constituted negligence per se. *Donaldson v. Great Atl. & Pac. Tea Co.*, 59 Ga. App. 79, 200 S.E. 498 (1938) (decided under former Code 1933, §§ 42-109, 42-115, 42-9901 and 42-9906).

**Judge must instruct jury that putrid food causing illness is negligence per se.** — In a suit against a dealer by a person alleged to have been made ill from eating alleged adulterated food sold by the defendant, the sale of which was penal under Code 1933, §§ 42-109, 42-115, 42-9901 and 42-9906 (see O.C.G.A. § 26-2-26), which was negligence per se where the evidence authorized an inference that the food was decomposed or putrid and was therefore unfit for human consumption and adulterated as defined in the act, and that the plaintiff was made sick from eating the food, it was error for the court to instruct the jury that if the defen-



## 6. Standards of Negligence (Cont'd)

dant exercised ordinary care in the sale of the food the plaintiff could not recover. *Donaldson v. Great Atl. & Pac. Tea Co.*, 59 Ga. App. 79, 200 S.E. 498 (1938) (decided under former Code 1933, §§ 42-109, 42-115, 42-9901 and 42-9906).

**Plaintiff can establish negligence per se as matter of law, and/or negligence as matter of fact.** — In a suit for damages against a seller of unwholesome food, the plaintiff may establish negligence as a matter of fact, or plaintiff may show negligence as a matter of law by establishing a breach of a statutory duty imposed by the provisions of the pure food and drug laws Code 1933, § 42-109 (see O.C.G.A. § 26-2-26), or plaintiff may rely on both classes of negligence. *Norris v. Pig'n Whistle Sandwich Shop., Inc.*, 79 Ga. App. 369, 53 S.E.2d 718 (1949) (decided under former Code 1933, § 42-109).

**Evidence that plaintiff was made sick by adulterated food sufficient for recovery.** — In a suit against a retailer of meats, where the plaintiff alleges that the defendant sold some pig's liver which on the same day was

cooked and eaten by the plaintiff's family all of whom became ill on the following morning, that when it was sold the liver was decomposed and unwholesome, contaminated by infectious matter, and unfit for food, that it poisoned the plaintiff, that the defendant was negligent in not inspecting the liver in holding it out as fresh and wholesome when it was not fit for human use, in not warning the plaintiff of the unwholesome condition and in selling the liver for human consumption in the unwholesome condition described, "which was a violation of state law," the petition was sufficient for recovery for a violation by the defendant of the statutory duty resting upon defendant, as contained in the provision of the former Code 1933, §§ 42-109, 42-115, 42-9901 and 42-9906 (see O.C.G.A. § 26-2-26), making it a violation of law for defendant to sell an article of food in the unwholesome and deleterious condition described. *Donaldson v. Great Atl. & Pac. Tea Co.*, 59 Ga. App. 79, 200 S.E. 498 (1938) (decided under former Code 1933, §§ 42-109, 42-115 and 42-9901).

## OPINIONS OF THE ATTORNEY GENERAL

**Candy that contains a small quantity of bourbon flavor or is bourbon flavored is adulterated.** 1957 Op. Att'y Gen. p. 144.

**Fiber separators between layers of apples must be sterilized.** — Former Code 1933, § 2103 (see O.C.G.A. § 26-2-26) was suffi-

cient to prohibit the reuse of fiber separators between layers of apples unless adequate provisions had been made to sterilize or otherwise render the separators suitable for use. 1960-61 Op. Att'y Gen. p. 1.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 18, 20 et seq., 36.

**C.J.S.** — 36A C.J.S., Food, §§ 15-17.

**ALR.** — Seller's duty to ascertain at his peril that articles of food conform to food regulations, 28 ALR 1385.

Preservative as adulterant within statute in relation to food, 50 ALR 76.

Statutes or ordinances in relation to confectionery, 58 ALR 293.

Constitutionality of statutes, ordinances or other regulations against adulteration of food products as applied to substances used for preservative purposes, 114 ALR 1214.

Infected or tainted condition of milk or other food, or contamination in water, and

its causation of the sickness of the consumer, as inferable from such sickness, 130 ALR 616.

Liability of manufacturer or packer of defective article for injury to person or property of ultimate consumer who purchased from middleman, 140 ALR 191; 142 ALR 1490.

Implied warranty of fitness by one serving food, 7 ALR2d 1027; 87 ALR4th 804; 90 ALR4th 12.

Construction and application of Federal Food, Drug, and Cosmetic Act § 402 (a)(3) [21 USC § 342 (a)(3)] as to food deemed "adulterated," if it is filthy or the like, or unfit for food, 45 ALR2d 861.

Coloring matter as forbidden adulteration of food, 56 ALR2d 1129.

Liability for injury or death allegedly caused by foreign object in food or food product, 1 ALR5th 1.

Liability for injury or death allegedly caused by spoilage, contamination, or other

deleterious condition of food or food product, 2 ALR5th 1.

Liability for injury or death allegedly caused by food product containing object related to, but not intended to be present in, product, 2 ALR5th 189.

## **26-2-27. Poisonous or deleterious substances in food; exception for required substances.**

(a) Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of paragraph (2) of Code Section 26-2-26.

(b) When a poisonous or deleterious substance is required in the production of food or cannot be avoided by good manufacturing process, the Commissioner shall promulgate regulations limiting the quantity therein or thereon to such extent as the Commissioner finds necessary for the protection of public health; and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of paragraph (2) of Code Section 26-2-26. While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of paragraph (1) of Code Section 26-2-26.

(c) In determining the quantity of added poisonous or deleterious substances to be tolerated in or on different articles of food, the Commissioner shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances. (Ga. L. 1956, p. 195, § 13.)

## **JUDICIAL DECISIONS**

**Editor's notes.** — Some of the cases cited below were decided under former Code 1910, § 2103.

**Manufacturer not liable under section if substance not added.** — Code 1910, § 2103 (see O.C.G.A. § 26-2-26(1) and (2)) is not applicable where the contention is not that the defendant had adulterated the product by adding some deleterious foreign sub-

stance to the normal constituency of the product in order to sell it as a part of the product itself, but where the charge only contends that the defendant was negligent in allowing the normal ingredients of the product to become putrid and unwholesome. *Armour & Co. v. Miller*, 39 Ga. App. 228, 147 S.E. 184 (1929) (decided under former Code 1910, § 2103).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 21.

**C.J.S.** — 36A C.J.S., Food, § 15.

**ALR.** — Preservative as adulterant within statute in relation of food, 50 ALR 76.

Statutory provisions relating to purity of food products as applicable to foreign substances which get into product as result of accident or negligence, and not by purpose or design, 98 ALR 1496.

Constitutionality of statutes, ordinances or other regulations against adulteration of food products as applied to substances used for preservative purposes, 114 ALR 1214.

Liability of manufacturer or packer of defective article for injury to person or property of ultimate consumer who purchased from middleman, 140 ALR 191; 142 ALR 1490.

**26-2-28. When food deemed misbranded.**

A food shall be deemed to be misbranded if:

(1) Its labeling is false or misleading in any particular;

(2) It is offered for sale under the name of another food;

(3) It is an imitation of another food for which a definition and standard of identity have been prescribed by regulations as provided by Code Section 26-2-35; or if it is an imitation of another food that is not subject to paragraph (7) of this Code section, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated;

(4) Its container is so made, formed, or filled as to be misleading;

(5)(A) In package form, unless it bears a label containing:

(i) The name and place of business of the manufacturer, packer, or distributor; and

(ii) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count.

However, under division (ii) of subparagraph (A) of this paragraph, reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the Commissioner; and a food shall not be deemed misbranded because of omission of the information required by division (i) of subparagraph (A) of this paragraph where such omission is authorized in writing by the Commissioner.

(B) The Commissioner may authorize the omission from the label of packaged food of the name and place of business of the manufacturer, packer, or distributor upon a showing of undue hardship because of the size of the package, the material of which the package is made, or the disproportionate cost of compliance. Before authorizing such omission, the Commissioner shall require the filing of a certificate of



territorial responsibility in a form prescribed by him. Failure to maintain on file with the Commissioner a correct current statement of territorial responsibility in accordance with the Commissioner's requirements shall terminate any such authorization previously granted;

(6) Any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) It purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by Code Section 26-2-35, unless:

(A) It conforms to such definition and standard; and

(B) Its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food;

(8) It purports to be or is represented as:

(A) A food for which a standard of quality has been prescribed by regulations as provided by Code Section 26-2-35 and its quality falls below such standard, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

(B) A food for which a standard or standards of fill of container have been prescribed by regulation as provided by Code Section 26-2-35, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(9)(A) It is not subject to paragraph (7) of this Code section, unless it bears labeling clearly giving:

(i) The common or usual name of the food, if any such name exists; and

(ii) In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each;

(B) To the extent that compliance with the requirements of division (ii) of subparagraph (A) of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Commissioner;

(C) The requirements of division (ii) of subparagraph (A) of this paragraph shall not apply to any carbonated beverage, the ingredients

of which have been fully and correctly disclosed, to the extent prescribed by division (ii) of subparagraph (A) of this paragraph, to the Commissioner in an affidavit;

(10) It purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Commissioner determines to be, and by regulations prescribes, as necessary in order fully to inform purchasers as to its value for such uses;

(11) It bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact, provided that, to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the Commissioner; or

(12) It is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded. (Ga. L. 1956, p. 195, § 11; Ga. L. 1966, p. 180, § 1; Ga. L. 1982, p. 3, § 26.)

**Law reviews.** — For comment on *Aeration Processes v. Commissioner*, 194 N.E.2d 838 (Mass. 1963), and *Coffee-Rich v. Kansas State Bd. of Health*, 192 Kan. 431, 388 P.2d

582 (1964), discussing imitation foods and misbranding statutes, see 13 J. Pub. L. 536 (1964).

## JUDICIAL DECISIONS

### ANALYSIS

1. GENERAL CONSIDERATION
2. JURISDICTION
3. APPLICABILITY

#### 1. General Consideration

**Editor's notes.** — In light of the similarity of the provisions, decisions under former Code 1910, §§ 2104, 2115 and 2117, are included in the annotations for this section.

**The purpose of the law** against adulteration or misbranding is to protect consumers from deception or injury, and it is to be conclusively presumed that it was adopted to prevent injury to the public health by the sale and transportation in intrastate commerce of misbranded and adulterated foods. *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929), aff'd, 37 F.2d 1014 (5th Cir. 1930) (decided under former Code 1910, § 2101).

#### 2. Jurisdiction

**Jurisdiction of federal court to enjoin wrongful confiscation of food products and**

prosecutions for violating Code 1910, § 2103 (see O.C.G.A. § 26-2-26), see *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929), aff'd, 37 F.2d 1014 (5th Cir. 1930) (decided under former Code 1910, § 2117).

#### 3. Applicability

**The word "imitation" as used in former Code 1910, § 2104 (see O.C.G.A. § 26-2-28) indicated something intentional rather than incidental, and imported more than mere resemblance or similitude.** *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929), aff'd, 37 F.2d 1014 (5th Cir. 1930) (decided under former Code 1910, § 2104).

**Distinctive name not imitation.** — "Southern nut product" held a "distinctive" name, not an imitation of creamery butter and not adulterated. *Baltimore Butterine Co. v.*

Talmadge, 32 F.2d 904 (S.D. Ga. 1929), aff'd, 37 F.2d 1014 (5th Cir. 1930) (decided under former Code 1910, § 2104).

**A product sometimes used as a substitute** for creamery butter without being declared to be such was not banned. *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929), aff'd, 37 F.2d 1014 (5th Cir. 1930) (decided under former Code 1910, § 2104).

**Products made wholly from vegetable oils, water, salt, and harmless coloring matter** are not prohibited from being sold by former Code 1910, § 2115. *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929) (decided under former Code 1910, § 2115).

**The substitute must not be sold so misbranded as to deceive or so adulterated as to**

**injure.** *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929), aff'd, 37 F.2d 1014 (5th Cir. 1930) (decided under former Code 1910, § 2101).

**Former Code 1910, § 2101 (see O.C.G.A. § 26-2-28) did not prohibit the use of adulterated or misbranded foods.** *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929), aff'd, 37 F.2d 1014 (5th Cir. 1930) (decided under former Code 1910, § 2101).

**Former Code 1910, § 2104 (see O.C.G.A. § 26-2-28) dealt with articles sold in commerce.** *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929), aff'd, 37 F.2d 1014 (5th Cir. 1930) (decided under former Code 1910, § 2104).

### OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the provisions, opinions under Ga. L. 1956, p. 195 are included in the annotations for this section.

**The provisions of Ga. L. 1956, p. 195 (see O.C.G.A. § 26-2-28) apply to bottled soft drinks.** 1958-59 Op. Att'y Gen. p. 7 (decided under Ga. L. 1956, p. 195).

**A label on a package of meat, in order to**

**comply with Ga. L. 1956, p. 195 (see O.C.G.A. § 26-2-28), must contain the name and place of business of the specific establishment where the food is packaged;** merely placing the name of a retail food chain and the home office city on a label would not comply with these provisions. 1973 Op. Att'y Gen. No. 73-98 (decided under Ga. L. 1956, p. 195).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 24 et seq.

**C.J.S.** — 36A C.J.S., Food, §§ 12, 14, 23.

**ALR.** — Constitutionality of statutes requiring notice by label or otherwise, of the fact that product is imported, or as to the place of production, 83 ALR 1409; 124 ALR 572.

Provisions of statutes against misbranding or false labeling of food, drug or cosmetic products as applicable to literature other than that attached to product itself, 143 ALR 1453.

### 26-2-29. Misleading advertisements; certain practices declared misleading.

(a) An advertisement of a food shall be deemed to be false if it is misleading in any particular.

(b) By way of illustration only and without limiting the scope of subsection (a) of this Code section, the following practices employed in the advertisement of a food are declared to be misleading:

(1) Causing actual confusion or actual misunderstanding as to the source, sponsorship, approval, or certification of food;

(2) Using deceptive representations or designations of geographic origin in connection with food;



(3) Representing that food has sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that it does not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;

(4) Representing that food is of a particular standard, quality, or grade if it is not; or

(5) Making false or misleading statements concerning the food of another. (Ga. L. 1956, p. 195, § 14; Ga. L. 1989, p. 260, § 1.)

**Cross references.** — False advertising generally, § 10-1-420 et seq.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 32 Am. Jur. 2d, False Pretenses, § 88. 37 Am. Jur. 2d, Fraud and Deceit, § 79.

**C.J.S.** — 36A C.J.S., Food, § 23. 37 C.J.S., Fraud, § 23 et seq.

**ALR.** — Validity and construction of regulations dealing with misrepresentation in the sale of Kosher food, 52 ALR3d 959.

#### **26-2-30. Factors to be taken into account in determining whether labels or advertisements are misleading.**

If an article is alleged to be misbranded because the labeling is misleading or if an advertisement is alleged to be false because it is misleading, then, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statements, words, designs, devices, sound, or any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual. (Ga. L. 1956, p. 195, § 2.)

**Cross references.** — False advertising generally, § 10-1-420 et seq.

#### **26-2-30.1. Beef produced without antibiotics or growth hormones; “Georgia lean” beef.**

(a) The Commissioner of Agriculture is authorized to promulgate and adopt rules and regulations for the labeling of beef and for the purpose of certifying beef as having been produced without feeding, injecting, or implanting antibiotics or growth hormones in the animal from which such beef was produced.

(b) The Commissioner of Agriculture is authorized to promulgate and adopt rules and regulations and to establish standards for the labeling and certification of beef as "Georgia lean." (Code 1981, § 26-2-30.1, enacted by Ga. L. 1986, p. 1089, § 1.)

### 26-2-31. Repacking of flour, grits, hominy, and cornmeal; exceptions.

Reserved. Repealed by Ga. L. 1999, p. 642, § 1, effective July 1, 1999.

**Editor's notes.** — This Code section was based on Ga. L. 1889, p. 170, § 1; Ga. L. 1890-91, p. 236, § 1; Civil Code 1895, § 1622; Penal Code 1895, §§ 550, 551; Civil Code 1910, § 1865; Penal Code 1910, §§ 562, 563; Code 1933, §§ 42-318, 42-9902; Ga. L. 1958, p. 652, § 1.

### 26-2-32. Honey and imitation honey labels.

(a) It shall be unlawful for any person to package any product and label the product as "honey" or "imitation honey," or to use the word "honey" in any prominent location on the label of such product, or to sell or offer for sale any product which is labeled "honey" or "imitation honey" or which contains a label with the word "honey" prominently displayed thereon, unless such product is pure honey manufactured by honeybees.

(b) Any person who violates any provisions of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$500.00 nor more than \$1,000.00 or by confinement for a total term not to exceed 12 months, or both. (Ga. L. 1974, p. 450, § 1; Ga. L. 1990, p. 391, § 1.)

**Cross references.** — Regulation of honeybees by Commissioner, § 2-14-40 et seq.

## OPINIONS OF THE ATTORNEY GENERAL

**Fingerprinting not required for violation of O.C.G.A. § 26-2-32.** — Violation of O.C.G.A. § 26-2-32 is not, at this time, designated as an offense for which those charged with a violation are to be fingerprinted. 1990 Op. Att'y Gen. No. 90-22.

## RESEARCH REFERENCES

**ALR.** — Constitutionality of statutes requiring notice by label or otherwise, of the fact that product is imported, or as to the place of production, 124 ALR 572.

Provisions of statutes against misbranding or false labeling of food, drug, or cosmetic products, as applicable to literature other

than that attached to product itself, 143 ALR 1453.

Penal offense predicated upon violation of food law as affected by ignorance or mistake of fact, lack of criminal intent, or presence of good faith, 152 ALR 755.

**26-2-33. Enforcement of article by Commissioner; employment of personnel.**

(a) The Commissioner is charged with the duty of enforcing this article and rules, regulations, and standards adopted and promulgated under this article in establishments that have the majority of square footage of building floor space used for the operation of food sales as defined in Code Section 26-2-21. The measurement of square footage shall consider indoor and outdoor dining areas as part of food service as defined in Code Section 26-2-370. The Commissioner shall employ the necessary personnel and shall fix their compensation and prescribe their duties. Duly authorized representatives are authorized to enter upon and inspect the premises of any food sales establishment.

(b) Notwithstanding any other provision of this article, food service establishments as defined in Code Section 26-2-370 shall be inspected and regulated under Article 13 of this chapter and shall not be subject to inspection or enforcement under this article. (Ga. L. 1956, p. 195, § 15; Ga. L. 2000, p. 1558, § 2.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2000, the semicolon following “article” in the first sentence was not reenacted.

### JUDICIAL DECISIONS

**Immunity for inspectors.** — Inspectors for the consumer protection division who informed a public warehouseman that the pecans stored at its warehouse were unfit for human consumption without destroying the condemned pecans expeditiously nor notifying the holders of a security interest in the pecans of the condemnation owed no duty to the holders of the security interest under

the Georgia Food Act, O.C.G.A. Art. 2, Ch. 2, T. 26. The injury that the holders suffered in losing their security was not the type of injury the Georgia Food Act was designed to prevent. *Planters & Citizens Bank v. Pennsylvania Millers Mut. Ins. Co.*, 786 F. Supp. 991 (S.D. Ga. 1992), *aff'd*, 992 F.2d 328 (11th Cir. 1993).

**26-2-34. Promulgation of regulations; notice and hearing for proposed amendments.**

(a) The authority to promulgate regulations for the efficient enforcement of this article is vested in the Commissioner. The Commissioner is authorized to make the regulations promulgated under this article conform, insofar as practicable, with those promulgated under the federal act.

(b) Hearings authorized or required by this article shall be conducted by the Commissioner or such officer, agent, or employee as the Commissioner may designate for the purpose.

(c) Before promulgating any regulation authorized by Code Sections 26-2-35 and 26-2-37 and paragraph (10) of Code Section 26-2-28, the Commissioner shall give appropriate notice of the proposal and of the time



and place for a hearing. The regulation so promulgated shall become effective on a date fixed by the Commissioner, which date shall not be prior to 30 days after its promulgation. Such regulation may be amended or repealed in the same manner as is provided for its adoption, except that, in the case of a regulation amending or repealing any such regulation, the Commissioner, to such an extent as is deemed necessary, in order to prevent undue hardship, may disregard the foregoing provisions regarding notices, hearing, or effective date. (Ga. L. 1956, p. 195, § 15.)

### JUDICIAL DECISIONS

**State cannot prohibit sale of food merely because it resembles existing product.** — Neither the commissioner nor the Department of Agriculture has authority to promulgate a rule absolutely prohibiting the sale of

a harmless and nutritious food product merely because it resembles another product already on the market. Department of Agric. v. Quality Food Prods., Inc., 224 Ga. 585, 163 S.E.2d 704 (1968).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 6.

**C.J.S.** — 36A C.J.S., Food, § 4.

### 26-2-35. Food regulations.

(a) Whenever in the judgment of the Commissioner such action will promote honesty and fair dealing in the interest of the consumers, the Commissioner shall promulgate regulations fixing and establishing for any food or any class of food a reasonable definition and standard of identity and, if applicable, a reasonable standard of quality and fill of container.

(b) In prescribing a definition and a standard of identity for any food or class of food in which optional ingredients are permitted, the Commissioner shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the federal act. (Ga. L. 1956, p. 195, § 9.)

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 6, 15, 19, 24. 63C Am. Jur. 2d, Public Officers and Employees, § 237.

**C.J.S.** — 36A C.J.S., Food, §§ 4, 14. 73 C.J.S., Public Administrative Law and Procedure, §§ 88, 89.

### 26-2-36. Right of entry in food establishments and transport vehicles; examination of samples obtained.

(a) The Commissioner or his duly authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which food is manufactured, processed, packed, or held for introduction into

commerce and any vehicle being used to transport or hold such foods to commerce for the purposes:

(1) Of inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this article are being violated; and

(2) Of securing samples or specimens of any food, after paying or offering to pay for such sample,

(b) It shall be the duty of the Commissioner to make or cause to be made examinations of samples secured under subsection (a) of this Code section to determine whether or not this article is being violated. (Ga. L. 1956, p. 195, § 16.)

**Cross references.** — Authority of enforcement personnel of Public Service Commission to stop and inspect motor carriers, §§ 46-7-28, 46-7-70.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 13.  
**C.J.S.** — 36A C.J.S., Food, §§ 12, 13.  
**ALR.** — Validity, construction, and application of statutes or ordinances relating to inspection of food sold at retail, 127 ALR 322.

### 26-2-37. Temporary permits.

(a) Whenever the Commissioner finds, after investigation, that the distribution in Georgia of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health and that such injurious nature cannot be adequately determined after such articles have entered commerce, he then, and in such case only, shall promulgate regulations providing for the issuance to manufacturers, processors, or packers of such class of food in such locality of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and, after the effective date of such regulations and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the Commissioner as provided by such regulations.

(b) The Commissioner is authorized to suspend immediately upon notice any permit issued under authority of this Code section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit. The Commissioner shall, immediately after prompt hearing and inspection of the establishment, reinstate such permit

if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued or as amended.

(c) Any officer or employee duly designated by the Commissioner shall have access to any factory or establishment, the operator of which holds a permit from the Department of Agriculture, for the purpose of ascertaining whether or not the conditions of the permit are being complied with. Denial of access for such inspection shall be grounds for suspension of the permit until such access is freely given by the owner or operator. (Ga. L. 1956, p. 195, § 12.)

#### RESEARCH REFERENCES

**ALR.** — Seller's duty to ascertain at his peril that articles of food conform to food regulations, 28 ALR 1385.

Liability for injury or death allegedly caused by spoilage, contamination, or other deleterious condition of food or food product, 2 ALR5th 1.

Liability for injury or death allegedly caused by food product containing object related to, but not intended to be present in, product, 2 ALR5th 189.

#### **26-2-38. Detention or embargo of adulterated or misbranded food.**

(a) Whenever a duly authorized agent of the Commissioner finds or has probable cause to believe that any food is adulterated or misbranded within the meaning of this article, such agent shall affix to such article or to any container, field, building, or structure which contains such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by the agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without permission of the Commissioner. Upon application, the Commissioner shall grant permission to move or dispose of such article to a safe and secure area and in a safe and secure manner.

(b) When an article detained or embargoed under subsection (a) of this Code section has been found by such agent to be adulterated or misbranded, he shall bring an action for condemnation of such article in the superior court of the county where the article is detained or embargoed. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tags or other markings.

(c) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof under the supervision of the Commissioner and all court costs and fees, and storage and other proper expenses shall be taxed against the claimant of such article or his agent, provided



that, when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond conditioned that such article shall be so labeled or processed, has been executed, may by proper order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the Commissioner. The expense of such supervision shall be paid by the claimant. Such shall be returned to the claimant of the article on representation to the court by the Commissioner that the article is no longer in violation of this article and that the expense of such supervision has been paid.

(d) Whenever the Commissioner or any of his authorized agents shall find in any room, building, vehicle for transportation, or other structure any meat, seafood, poultry, vegetables, fruit, or other perishable articles which are unsound, which contain any filthy, decomposed, or putrid substances, or which might be poisonous or deleterious to health or otherwise unsafe, the same shall be declared to be a nuisance and the Commissioner or his authorized agent shall immediately condemn or destroy or in any other manner render the same unsalable as human food. (Ga. L. 1956, p. 195, § 6; Ga. L. 1986, p. 197, § 1; Ga. L. 1998, p. 189, § 2.)

### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the provisions, decisions under former Code 1910, § 2117 and former Code 1933, § 42-109, are included in the annotations for this section.

**Definition of adulterated food.** — Food is adulterated, within the meaning of Code 1933, § 42-109 (see O.C.G.A. § 26-2-26), if it contains something "foreign" or "added," or it must appear that the object is a "portion of an animal unfit for food."

*Davison-Paxon Co. v. Archer*, 91 Ga. App. 131, 85 S.E.2d 182 (1954) (decided under former Code 1933, § 42-109).

**Jurisdiction of federal court to enjoin wrongful confiscation of food products and prosecutions for violating Code 1910, § 2101** (see O.C.G.A. § 26-2-22), see *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929), *aff'd*, 37 F.2d 1014 (5th Cir. 1930) (decided under former Code 1910, § 2117).

### OPINIONS OF THE ATTORNEY GENERAL

**Right of Department of Agriculture to embargo and destroy adulterated food.** — Department of Agriculture inspectors are authorized to detain, to embargo, and under

certain circumstances, to destroy adulterated food in the possession of any food establishment, including pecans on display. 1970 Op. Att'y Gen. No. U70-22.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 61.

**C.J.S.** — 36A C.J.S., Food, §§ 50, 52.

**ALR.** — Provisions of statutes against mis-

branding or false labeling of food, drug, or cosmetic products, as applicable to literature other than that attached to product itself, 143 ALR 1453.

**26-2-39. Summaries of judgments, decrees, and court orders; dissemination of information in the interest of health and protection of consumers against fraud.**

(a) The Commissioner may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this article, including the nature of the charge and the disposition thereof.

(b) The Commissioner may also cause to be disseminated such information regarding food as the Commissioner deems necessary in the interest of public health and the protection of the consumer against fraud.

(c) Nothing in this Code section shall be construed to prohibit the Commissioner from collecting, reporting, and illustrating the results of the investigations of the Commissioner. (Ga. L. 1956, p. 195, § 17.)

**RESEARCH REFERENCES**

**ALR.** — Liability of manufacturer or seller for injury caused by food or food product sold, 77 ALR2d 7.

Liability of packer, foodstore, or restaurant for causing trichinosis, 96 ALR3d 451.

Liability for injury or death allegedly caused by foreign object in food or food product, 1 ALR5th 1.

Liability for injury or death allegedly caused by spoilage, contamination, or other deleterious condition of food or food product, 2 ALR5th 1.

Liability for injury or death allegedly caused by food product containing object related to, but not intended to be present in, product, 2 ALR5th 189.

**26-2-40. Minor violations of article.**

Nothing in this article shall be construed as requiring the Commissioner to report, for the institution of proceedings under this article, minor violations of this article whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. (Ga. L. 1956, p. 195, § 8.)

**RESEARCH REFERENCES**

**C.J.S.** — 36A C.J.S., Food, § 39.

**26-2-41. Prosecution of violations; notice to defendant prior to institution of criminal proceeding.**

It shall be the duty of each prosecuting attorney to whom the Commissioner reports any violation of this article to cause appropriate proceedings to be instituted in the appropriate court without delay and to prosecute the same in the manner provided by law. Before any violation of this article is reported to any prosecuting attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated

shall be given appropriate notice and an opportunity to present his views before the Commissioner or his designated agent orally or in writing, in person, or by attorney, with regard to such contemplated proceedings. (Ga. L. 1956, p. 195, § 7.)

### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the provisions, decisions under former Code 1910, § 2102, are included in the annotations for this section.

**Jurisdiction of federal court to enjoin wrongful confiscation of food products** and prosecutions for violating Code 1910, § 2101 (see O.C.G.A. § 26-2-22), see *Baltimore Butterine Co. v. Talmadge*, 32 F.2d 904 (S.D. Ga. 1929), *aff'd*, 37 F.2d 1014 (5th Cir. 1930).

**Indictment sufficient.** — An indictment charging that the defendant unlawfully sold “adulterated food,” in that defendant sold to a named person “a portion of an animal,

to wit, a diseased cow, unfit for food, that had died otherwise than by slaughter,” was not subject to demurrer (now motion to dismiss) because of failure to show compliance with statutory provisions as to examination of food by or under the direction of the state chemist. *Evitt v. State*, 23 Ga. App. 532, 98 S.E. 737 (1919).

**Indictment not subject to demurrer (now motion to dismiss)** because of failure to show how or in what way the portion sold was unfit for food, or was diseased, or what kind of product of the diseased cow was sold. *Evitt v. State*, 23 Ga. App. 532, 98 S.E. 737 (1919).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 74 et seq.

**C.J.S.** — 36A C.J.S., Food, §§ 39-49.

## ARTICLE 3

### MEAT INSPECTION

**Cross references.** — Disposal of diseased, disabled, or dead animals generally, Ch. 5, T. 4.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 33, 34.

## PART 1

### GENERAL PROVISIONS

#### 26-2-60. Short title.

This article may be cited as the “Georgia Meat Inspection Act.” (Ga. L. 1969, p. 1028, § 33.)



**26-2-61. Legislative intent.**

Meat and meat food products are an important source of the nation's total supply of food. It is essential to the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded meat or meat food products are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged meat and meat food products, and result in sundry losses to livestock producers and processors of meat and meat food products as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that regulation by the Commissioner and cooperation by this state and the United States as contemplated by this article are appropriate to the health and welfare of consumers and otherwise effectuate the purposes of this article. (Ga. L. 1969, p. 1028, § 2.)

**26-2-62. Definitions.**

As used in this article, the term:

(1) "Adulterated" shall apply to any carcass, part thereof, meat, or meat food product under one or more of the following circumstances:

(A) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but, in case the substance is not an added substance, such article shall not be considered adulterated under this subparagraph if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(B)(i) If it bears or contains, by reason of administration of any substance to the live animal or otherwise, any added poisonous or added deleterious substance, other than one which is a pesticide chemical in or on a raw agricultural commodity, a food additive, or a color additive, which may, in the judgment of the Commissioner, make such article unfit for human food;

(ii) If it is in whole or in part a raw agricultural commodity which bears or contains a pesticide chemical which is unsafe within the meaning of Section 408 of the Federal Food, Drug, and Cosmetic Act;

(iii) If it bears or contains any food additive which is unsafe within the meaning of Section 409 of the Federal Food, Drug, and Cosmetic Act;

(iv) If it bears or contains any color additive which is unsafe within the meaning of Section 706 of the Federal Food, Drug, and Cosmetic Act; or

(v) If an article which is not adulterated under division (ii), (iii), or (iv) of this subparagraph bears or contains any pesticide chemical, food additive, or color additive which is prohibited by regulations of the Commissioner in establishments at which inspection is maintained under Code Sections 26-2-100 through 26-2-115;

(C) If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(D) If it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health;

(E) If it is in whole or in part the product of an animal which has died otherwise than by slaughter;

(F) If its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health;

(G) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to Section 409 of the Federal Food, Drug, and Cosmetic Act;

(H) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight or reduce its quality or strength or make it appear better or of greater value than it is; or

(I) If it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance.

(2) "Animal food manufacturer" means any person, firm, or corporation engaged in the business of manufacturing or processing food for animals, such food being derived wholly or in part from carcasses or parts or products of the carcasses of cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules, or other equines.

(3) "Capable of use as human food" shall apply to any carcass or part or product of a carcass of any animal, unless it is denatured or otherwise

identified as required by regulations prescribed by the Commissioner to deter its use as human food, or unless it is naturally inedible by humans.

(4) "Commissioner" means the Commissioner of Agriculture of the State of Georgia or his delegate.

(5) "Federal Food, Drug, and Cosmetic Act" means the act so entitled and acts amendatory thereof or supplementary thereto.

(6) "Federal Meat Inspection Act" means the act so entitled as amended by the Wholesome Meat Act.

(7) "Firm" means any partnership, association, or other unincorporated business organization.

(8) "Intrastate commerce" means commerce within this state.

(9) "Label" means a display of written, printed, or graphic matter upon the immediate container, not including package liners, of any article.

(10) "Labeling" means all labels and other written, printed, or graphic matter upon any article or any of its containers or wrappers or accompanying such article.

(11) "Meat broker" means any person, firm, or corporation engaged in the business of buying or selling, on commission, carcasses, parts of carcasses, meat, or meat food products of cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules, or other equines, or otherwise negotiating purchases or sales of such articles other than for his or her own account or as an employee of another person, firm, or corporation.

(12) "Meat food product" means any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, ratites, nontraditional livestock, rabbits, or goats, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or which historically have not been considered by consumers as products of the meat food industry and which are exempted from definition as a meat food product by the Commissioner under such conditions as the Commissioner may prescribe by regulation to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, ratites, nontraditional livestock, rabbits, and goats.

(13) "Misbranded" shall apply to any carcass, part thereof, meat, or meat food product under one or more of the following circumstances:



- (A) If its labeling is false or misleading in any particular;
- (B) If it is offered for sale under the name of another food;
- (C) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated;
- (D) If its container is so made, formed, or filled as to be misleading;
- (E) If in a package or other container, unless it bears a label showing: (i) the name and place of business of the manufacturer, packer, or distributor; and (ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, provided that reasonable variations may be permitted and exemptions as to small packages may be established by regulations promulgated by the Commissioner;
- (F) If any word, statement, or other information required by or under authority of this article to appear on the label or other labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (G) If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the Commissioner under Code Section 26-2-107, unless it conforms to such definition and standard and its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food;
- (H) If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the Commissioner under Code Section 26-2-107 and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;
- (I) If it is not subject to the provisions of subparagraph (G), unless its label bears:
  - (i) The common or usual name of the food, if there is any; and
  - (ii) In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the Commissioner, be designated as spices, flavorings, and coloring without

naming each, provided that, to the extent that compliance with the requirements of this division is impracticable or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Commissioner;

(J) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Commissioner, after consultation with the secretary of agriculture of the United States, determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

(K) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact, provided that, to the extent that compliance with the requirements of this subparagraph is impracticable, exemptions shall be established by regulations promulgated by the Commissioner; or

(L) If it fails to bear, directly thereon or on its container, as the Commissioner may by regulations prescribe, the inspection legend and, unrestricted by any of the foregoing, such other information as the Commissioner may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

(13.1) "Nontraditional livestock" means the species of Artiodactyla (even-toed ungulates) listed as antelope, bison, buffalo, catalo, elk, deer other than white-tailed deer, and water buffalo that are held and possessed legally under the wild animal provisions of Chapter 5 of Title 27.

(14) "Official certificate" means any certificate prescribed by regulations of the Commissioner for issuance by an inspector or other person performing official functions under this article.

(15) "Official device" means any device prescribed or authorized by the Commissioner for use in applying any official mark.

(16) "Official inspection legend" means any symbol prescribed by regulations of the Commissioner showing that an article was inspected and passed in accordance with this article.

(17) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the Commissioner to identify the status of any article or animal under this article.

(18) "Pesticide chemical," "food additive," "color additive," and "raw agricultural commodity" shall have the same meanings for purposes of this article as under the Federal Food, Drug, and Cosmetic Act.

(19) "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed.

(20) "Renderer" means any person, firm, or corporation engaged in the business of rendering carcasses or parts or products of the carcasses of cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules, or other equines, except rendering conducted under inspection under Code Sections 26-2-100 through 26-2-115.

(21) "Retail establishment" means any establishment which sells, offers for sale, or displays for sale to the public any meat or meat product, whether prepared or otherwise, including any establishment in which meat or meat products are sold for consumption off the premises thereof. (Ga. L. 1969, p. 1028, § 1; Ga. L. 1971, p. 56, § 1; Ga. L. 1974, p. 453, § 1; Ga. L. 1995, p. 244, § 12; Ga. L. 1996, p. 1219, § 1.)

**U.S. Code.** — The Federal Food, Drug, and Cosmetic Act, referred to throughout this section, is codified at 21 U.S.C. § 301 et seq. Section 408 of that Act, referred to in division (1)(B)(ii) of this section, is codified at 21 U.S.C. § 346a. Section 409 of that Act, referred to in division (1)(B)(iii) of this section, is codified at 21 U.S.C. § 348. Sec-

tion 706 of that Act, referred to in division (1)(B)(iv) of this section, is codified at 21 U.S.C. § 376.

The Federal Meat Inspection Act of 1907 and the Federal Wholesome Meat Act, referred to in paragraph (6) of this section, are codified at 21 U.S.C. § 601 et seq.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 20 et seq.

**C.J.S.** — 36A C.J.S., Food, §§ 12, 15, 16, 23.

**ALR.** — Construction and application of Federal Food, Drug, and Cosmetic Act § 402(a)(3) [21 USC § 342(a)(3)] as to food

deemed "adulterated," if it is filthy or the like, or unfit for food, 45 ALR2d 861.

What is "drug" within meaning of § 201(g)(1) of Federal Food, Drug, and Cosmetic Act (21 USCS § 321(g)(1)), 127 ALR Fed. 141.

#### 26-2-63. Federal and state cooperation.

(a) The Georgia Department of Agriculture, acting by and through the Commissioner, is designated as the state agency which shall be responsible for cooperating with the secretary of agriculture of the United States under the provisions of the Federal Meat Inspection Act and other related federal acts; and said department is directed to cooperate with the secretary of agriculture of the United States in developing and administering the meat inspection program of this state under this article to assure that its requirements will be at least equal to those imposed under Titles I and IV of the Federal Meat Inspection Act and in developing and administering the program of this state under Part 4 of this article in such a manner as will effectuate the purposes of this article and applicable federal acts.

(b) In such cooperative efforts, the Commissioner is authorized to accept from the secretary advisory assistance in planning and otherwise



developing the state program; technical and laboratory assistance and training, including necessary curricular and instructional materials and equipment; and financial and other aid for administration of such a program. The Commissioner is further authorized to spend public funds of this state appropriated for administration of this article in furtherance of the cooperative program.

(c) The Commissioner is authorized to recommend to the secretary of agriculture such officials or employees of this state as the Commissioner shall designate for appointment to the advisory committees provided for in the Federal Meat Inspection Act; and the Commissioner shall serve as the representative of the Governor for consultation with the secretary under such act. (Ga. L. 1969, p. 1028, § 20.)

**U.S. Code.** — The Federal Meat Inspection Act, referred to in this section, is codified at 21 U.S.C. § 601 et seq.

#### **26-2-64. Application of article.**

The requirements of this article shall apply to persons, firms, corporations, establishments, animals, and articles regulated under the Federal Meat Inspection Act only to the extent provided for in Section 408 of the federal act. (Ga. L. 1969, p. 1028, § 28.)

**U.S. Code.** — Section 408 of the Federal Meat Inspection Act, referred to in this section, is codified as 21 U.S.C. § 678 et seq.

### **PART 2**

#### **ENFORCEMENT OF ARTICLE**

#### **26-2-80. Promulgation of regulations.**

The Commissioner is authorized to promulgate, from time to time, such regulations as are necessary to effectuate the purpose of this article. (Ga. L. 1969, p. 1028, § 31.)

#### **RESEARCH REFERENCES**

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 6.

**C.J.S.** — 36A C.J.S., Food, § 4.

#### **26-2-81. Powers of Commissioner; access to documentary evidence and witnesses; false reports; failure to file reports.**

(a) The Commissioner shall also have power:

(1) To gather and compile information concerning and to investigate from time to time the organization, business, conduct, practices, and management of any person, firm, or corporation subject to this article and the relation thereof to other persons, firms, and corporations; and

(2) To require, by regulation, persons, firms, and corporations subject to this article, or any class of them, to file with the Commissioner, in such form as he may prescribe, annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commissioner such information as he may require as to the organization, business, conduct, practices, management, and relation to other persons, firms, and corporations of the person, firm, or corporation filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise as the Commissioner may prescribe, and shall be filed with the Commissioner within such reasonable period as he may prescribe, unless additional time is granted in any case by the Commissioner.

(b) For the purposes of this article, the Commissioner shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, firm, or corporation being investigated or proceeded against and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person, firm, or corporation relating to any matter under investigation. The Commissioner, hearing officer, or other designate may sign subpoenas and may administer oaths and affirmations, examine witnesses, and receive evidence.

(1) The attendance of witnesses and the production of documentary evidence may be required at any designated place of hearing. In case of disobedience to a subpoena, the Commissioner may apply to the superior court for an order requiring the attendance and testimony of witnesses and the production of documentary evidence.

(2) The appropriate superior court may, in case of contumacy or refusal to obey a subpoena issued to any person, firm, or corporation, issue an order requiring such person, firm, or corporation to appear before the Commissioner, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey the order of the court may be punished by such court as a contempt thereof.

(c)(1)(A) It shall be unlawful for any person, firm, or corporation willfully to:

(i) Make, or cause to be made, any false entry or statement of fact in any report required to be made under this article;

(ii) Make, or cause to be made, any false entry in any account, record, or memorandum kept by any person, firm, or corporation subject to this article;

(iii) Neglect or fail to make, or cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such person, firm, or corporation;

(iv) Remove out of the jurisdiction of this state or mutilate, alter, or by any other means falsify or conceal any documentary evidence of any such person, firm, or corporation; or

(v) Refuse to submit to the Commissioner or to any of his authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any such person, firm, or corporation in his possession or within his control.

(B) Any person or the officers or agents of any firm or corporation who violate this subsection shall, upon conviction, be punished by imprisonment of not more than three years or by a fine not to exceed \$5,000.00, or both.

(2) If any person, firm, or corporation required by this article to file any annual or special report fails so to do within the time fixed by the Commissioner for filing the report and such failure shall continue for 30 days after notice of such default, such person, firm, or corporation shall forfeit to this state the sum of \$100.00 for each and every day of the continuance of such failure, which forfeiture shall be payable into the state treasury and shall be recoverable in a civil action in the name of the state brought in the county where the person, firm, or corporation has his or its principal office or in any county in which he or it shall do business. It shall be the duty of the Attorney General to prosecute for the recovery of such forfeitures.

(3) Information obtained by the Commissioner pursuant to the authority of this article shall not be made public by any officer or employee of this state without the authorization of the Commissioner. Such information and records shall not be subject to Article 4 of Chapter 18 of Title 50, providing for the inspection of public records. (Ga. L. 1969, p. 1028, § 27; Ga. L. 2003, p. 140, § 26.)

**The 2003 amendment**, effective May 14, and correct the Code, revised language in 2003, part of an Act to revise, modernize, subparagraph (c)(1)(B).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 6.

**C.J.S.** — 36A C.J.S., Food, § 43. 76 C.J.S., Records, §§ 58, 59.

#### 26-2-82. Administrative penalties; judicial review.

The Commissioner, in order to enforce this article or any orders, rules, and regulations promulgated pursuant thereto, may issue an administrative



order imposing a penalty not to exceed \$1,000.00 for each violation whenever the Commissioner, after a hearing, determines that any person has violated this article or any regulations or orders promulgated under this article. The hearing and any administrative review thereof shall be conducted in accordance with the procedure for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person who has exhausted all administrative remedies available and who is aggrieved or adversely affected by any final order or action of the Commissioner shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." All penalties recovered as provided for in this article shall be paid into the state treasury. The Commissioner may file in the superior court of the county where the person under order resides or, if said person is a corporation, in the county wherein the corporation maintains its principal place of business or in the county wherein the violation occurred a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal, whereupon said court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment has been rendered in an action duly heard and determined by said court. The penalty prescribed in this Code section shall be concurrent, alternative, and cumulative with any and all other civil, criminal, or alternative rights, remedies, forfeitures, or penalties provided, allowed, or available to the Commissioner with respect to any violation of this article and any orders, rules, or regulations promulgated pursuant thereto. (Ga. L. 1979, p. 1037, § 1.)

#### RESEARCH REFERENCES

- Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 51 et seq., 60.      **ALR.** — Recovery of cumulative statutory penalties, 71 ALR2d 986.  
**C.J.S.** — 36A C.J.S., Food, §§ 4, 39.

#### **26-2-83. Withdrawal of meat inspection service.**

(a) The Commissioner is authorized to refuse to provide or to withdraw inspection service under Code Sections 26-2-100 through 26-2-115 and to revoke or suspend any license issued by the Department of Agriculture to any person, firm, or corporation subject to this article who shall violate any of the laws of this state pertaining to the department or any of the rules and regulations of the department promulgated pursuant to such laws, or who is unfit to engage in any business requiring inspection under Code Sections 26-2-100 through 26-2-115 because the applicant or recipient has been convicted in any federal or state court of:

- (1) Any felony; or

(2) More than one violation of any law, other than a felony, based upon the acquiring, handling, or distributing of unwholesome, mislabeled, or deceptively packaged food or upon fraud in connection with transactions in food.

(b) This Code section shall not affect in any way other provisions of this article for withdrawal of inspection services under Code Sections 26-2-100 through 26-2-115 from establishments failing to maintain sanitary conditions or to destroy condemned carcasses, parts, meat, or meat food products.

(c) For the purpose of this Code section, a person shall be deemed to be responsibly connected with the business if he was a partner, officer, director, holder, or owner of 10 percent or more of its voting stock or an employee in a managerial or executive capacity. (Ga. L. 1969, p. 1028, § 21.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 11, 66.      **C.J.S.** — 36A C.J.S., Food, §§ 12, 33, 41.

#### **26-2-84. Detention of carcasses, meat, and meat food products suspected of being adulterated or misbranded; removal of official marks.**

Whenever any carcass, part of a carcass, meat, or meat food product of cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules, or other equines, or any product exempted from the definition of a meat food product, or any dead, dying, disabled, or diseased cattle, sheep, swine, ratites, nontraditional livestock, rabbit, goat, or equine is found by any authorized representative of the Commissioner upon any premises where it is held for purposes of, or during or after, distribution and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of Part 3 of this article or Title I of the Federal Meat Inspection Act or the Federal Food, Drug, and Cosmetic Act, or that such article or animal has been or is intended to be distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed 20 days, pending action under Code Section 26-2-86 or notification of any federal authorities having jurisdiction over such article or animal; and it shall not be moved by any person, firm, or corporation from the place at which it is located when so detained, until released by such representative. All official marks may be required by such representative to be removed from such article or animal before it is released unless it appears to the satisfaction of the Commissioner that the article or animal is eligible to retain such marks. (Ga. L. 1969, p. 1028, § 22; Ga. L. 1974, p. 453, § 1; Ga. L. 1982, p. 3, § 26; Ga. L. 1995, p. 244, § 13; Ga. L. 1996, p. 1219, § 2.)

## RESEARCH REFERENCES

Am. Jur. 2d. — 4 Am. Jur. 2d, Animals, § 23. C.J.S. — 3A C.J.S., Animals, §§ 67, 73.

**26-2-85. Seizure and condemnation of carcasses, meat, and meat food products; release bond; costs.**

(a) Any carcass, part of a carcass, meat, or meat food product of cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules, or other equines, or any dead, dying, disabled, or diseased cattle, sheep, swine, ratite, nontraditional livestock, rabbit, goat, or equine, that is being transported or is held for sale in this state after such transportation, and that is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this article, is capable of use as human food and is adulterated or misbranded, or in any other way is in violation of this article, shall be liable to be proceeded against and seized and condemned, at any time, on an action for condemnation to be brought by the Commissioner in the superior court of the county in which the article or animal is found.

(b) If the article or animal is condemned, it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct. The proceeds, if sold, less the court costs and fees and storage and other proper expenses, shall be paid into the state treasury. The article or animals shall not be sold contrary to the provisions of this article or the Federal Meat Inspection Act or the Federal Food, Drug, and Cosmetic Act.

(c) Upon the execution and delivery of a good and sufficient bond conditioned that the article or animal shall not be sold or otherwise disposed of contrary to this article or the laws of the United States, the court may direct that such article or animal be delivered to the owner thereof subject to such supervision by authorized representatives of the Commissioner as is necessary to ensure compliance with the applicable laws.

(d) When a decree of condemnation is entered against the article or animal and it is released under bond or destroyed, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article or animal.

(e) This Code section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this article or other laws but shall be cumulative to such other authority. (Ga. L. 1969, p. 1028, § 23; Ga. L. 1974, p. 453, § 1; Ga. L. 1995, p. 244, § 14; Ga. L. 1996, p. 1219, § 3.)



## RESEARCH REFERENCES

- Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 61. used in violation of law as prerequisite to forfeiture action or proceeding, 8 ALR3d 473.
- C.J.S.** — 36A C.J.S., Food, §§ 50, 51, 56.
- ALR.** — Lawfulness of seizure of property

**26-2-86. Injunctions.**

In addition to other remedies provided for in this article, the Commissioner is authorized to apply to the superior court of the appropriate county for an injunction. Such court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of this article, notwithstanding whether or not there exists an adequate remedy at law or the fact that the conduct sought to be enjoined is in violation of the criminal provisions of this article. (Ga. L. 1969, p. 1028, § 24.)

## RESEARCH REFERENCES

- C.J.S.** — 36A C.J.S., Food, § 29.

**26-2-87. Minor violations.**

Nothing in this article shall be construed as requiring the Commissioner to report, for prosecution or for the institution of an action or injunction proceedings, minor violations of this article, whenever he believes that the public interest will be adequately served by a suitable written notice or warning. (Ga. L. 1969, p. 1028, § 26.)

## RESEARCH REFERENCES

- C.J.S.** — 36A C.J.S., Food, § 39.

**26-2-88. Penalties for fraud or distribution of adulterated articles; penalties for slaughter or distribution of diseased or cancerous animals.**

(a) Any person, firm, or corporation who violates this article with intent to defraud or who distributes or attempts to distribute an article that is adulterated, except as defined in subparagraph (H) of paragraph (1) of Code Section 26-2-62, shall be subject to imprisonment for not more than three years or a fine of not more than \$10,000.00, or both, provided that no person, firm, or corporation shall be subject to penalties under this subsection for receiving for transportation any article or animal in violation of this article if such receipt was made in good faith, unless such person, firm, or corporation refuses to furnish, on request of a representative of the Commissioner, the name and address of the person from whom he received

such article or animal and copies of all documents, if there are any, pertaining to the delivery of the article or animal to him.

(b) Any person who unlawfully slaughters any diseased or cancerous animal for purposes of selling any part of the carcass for human consumption or who knowingly distributes or attempts to distribute any part of such a carcass for human consumption shall be guilty of a felony and punished by imprisonment for not less than three years or more than ten years or by a fine of not less than \$10,000.00 or more than \$50,000.00, or both.

(c) Any person who violates any of the provisions of this article for which a penalty is not otherwise prescribed in this article or who violates any rule or regulation promulgated under this article shall be guilty of a misdemeanor. (Ga. L. 1969, p. 1028, §§ 25, 29; Ga. L. 1982, p. 980, §§ 1, 2; Ga. L. 1985, p. 149, § 26; Ga. L. 1986, p. 10, § 26.)

**Cross references.** — Disposal of dead animals, T. 4, Ch. 5. Animals suspected of bearing residue causing contaminated meat, § 26-2-180 et seq.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 65 et seq.

**C.J.S.** — 36A C.J.S., Food, §§ 39-41.

**ALR.** — Penal offense predicated upon violation of food law as affected by ignorance or mistake of fact, lack of criminal intent, or presence of good faith, 152 ALR 755.

Recovery for loss of business resulting from resale of unwholesome food or beverages furnished by another, 17 ALR2d 1379.

### PART 3

#### INSPECTION OF ANIMALS, CARCASSES, MEAT, AND MEAT FOOD PRODUCTS; ADULTERATION AND MISBRANDING

##### 26-2-100. Duties of inspectors.

The Commissioner shall appoint, from time to time, inspectors to make examination and inspection of all cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules, and other equines, the inspection of which is provided for, and of all carcasses and parts thereof, and of all meats and meat food products thereof, and of the sanitary conditions of all establishments in which such meat and meat food products are prepared. Said inspectors shall refuse to stamp, mark, tag, or label any carcass or any part thereof, or meat food product therefrom, prepared in any establishment described in this chapter until the same shall have actually been inspected and found to be not adulterated. Said inspectors shall perform such other duties as are provided by this article and by the rules and regulations to be promulgated by the Commissioner. (Ga. L. 1969, p. 1028, § 13; Ga. L. 1974, p. 453, § 1; Ga. L. 1995, p. 244, § 15; Ga. L. 1996, p. 1219, § 4.)

**Administrative rules and regulations.** — Eradication, Control, and Suppression of Dead animals, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Agriculture, 40-16-2.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 4 Am. Jur. 2d, Animals, § 32. 35A Am. Jur. 2d, Food, §§ 6, 13, 33. **C.J.S.** — 3A C.J.S., Animals, § 69. 36A C.J.S., Food, §§ 4, 12.

#### **26-2-100.1. Examinations and inspections of ratite or nontraditional livestock carcasses, meats, and meat food products.**

All examinations and inspections of ratite or nontraditional livestock carcasses and parts thereof, of ratite or nontraditional livestock meats and meat food products thereof, of sanitary conditions of all establishments in which ratite or nontraditional livestock meat and meat food products are prepared, and any other examination or inspection of ratites or nontraditional livestock and products thereof under or pursuant to this article shall be conducted by and through a voluntary inspection program with all costs thereof paid by the establishment slaughtering the ratites or nontraditional livestock or preparing such meat or meat food product, at rates established by the Commissioner. (Code 1981, § 26-2-100.1, enacted by Ga. L. 1995, p. 244, § 16; Ga. L. 1996, p. 1219, § 5.)

#### **26-2-101. Inspections and examinations; administration in conjunction with Article 2 of this chapter.**

All inspections and examinations made under this article shall be such and made in such manner as described in the rules and regulations promulgated by the Commissioner, if not inconsistent with this article. This article may be administered in conjunction with the administration of Article 2 of this chapter. (Ga. L. 1969, p. 1028, § 13; Ga. L. 2003, p. 140, § 26.)

**The 2003 amendment**, effective May 14, 2003, part of an Act to revise, modernize, and correct the Code, substituted “chapter” for “Chapter” at the end of the second sentence in this Code section.

#### **26-2-102. Inspection of animals prior to slaughter or preparation; examination and slaughtering of diseased animals; examination and inspection of method; right of Commissioner to deny or suspend inspections.**

(a) For the purpose of preventing the use in commerce of meat food products which are adulterated, the Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats,



horses, mules, and other equines before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment in this state in which slaughtering and preparation of meat and meat food products of such animals are conducted for commerce.

(b) All cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules, and other equines found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules, or other equines; and, when so slaughtered, the carcasses of said cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules, or other equines shall be subject to a careful examination and inspection, all as provided by the rules and regulations promulgated by the Commissioner.

(c) For the purpose of preventing the inhumane slaughtering of livestock, the Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of the method by which cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules, and other equines are slaughtered and handled in connection with slaughter in the slaughtering establishments inspected under this article. The Commissioner may refuse to provide inspection to a new slaughtering establishment or may cause inspection to be suspended temporarily at a slaughtering establishment if the Commissioner finds that any cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules, or other equines have been slaughtered or handled in connection with slaughter at such establishment by any method not in accordance with paragraph (2) of Code Section 26-2-110 and Code Section 26-2-110.1 until the establishment furnishes assurances satisfactory to the Commissioner that all slaughtering and handling in connection with slaughter of livestock shall be in accordance with such a method. (Ga. L. 1969, p. 1028, § 3; Ga. L. 1974, p. 453, § 1; Ga. L. 1981, p. 657, § 1; Ga. L. 1995, p. 244, § 17; Ga. L. 1996, p. 1219, § 6.)

**Cross references.** — Powers and duties of Commissioner regarding prevention of spread of parasitic livestock diseases, § 4-4-60 et seq. Regulation of business of livestock dealers generally, § 4-6-1 et seq.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 4 Am. Jur. 2d, Animals, §§ 42, 44. 35A Am. Jur. 2d, Food, §§ 5, 13, 33. **C.J.S.** — 3A C.J.S., Animals, §§ 69, 76, 117. 36A C.J.S., Food, §§ 4, 12.

**26-2-103. Post-mortem inspection and marking of carcasses and parts; disposition of condemned carcasses and parts; reinspection; removal of inspectors.**

(a) The Commissioner shall cause to be made, by inspectors appointed for that purpose, a post-mortem examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules, and other equines, capable of use as human food, to be prepared at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in this state in which such articles are prepared for commerce.

(b) The carcasses and parts thereof of all such animals found to be not adulterated shall be marked, stamped, tagged, or labeled as "Inspected and Passed"; and said inspectors shall label, mark, stamp, or tag as "Inspected and Condemned," all carcasses and parts thereof of animals found to be adulterated; and all carcasses and parts thereof thus inspected and condemned shall be made unfit for human consumption by such establishment in the presence of an inspector; and the Commissioner may remove inspectors from any establishment which fails so to destroy any such condemned carcass or part thereof.

(c) Inspectors, after the first inspection, shall, when they deem it necessary, reinspect said carcasses or parts thereof to determine whether since the first inspection the same have become adulterated. If any carcass or any part thereof shall, upon examination and inspection subsequent to the first examination and inspection, be found to be adulterated, it shall be made unfit for human consumption by such establishment in the presence of an inspector. The Commissioner may remove inspectors from any establishment which fails to destroy any such condemned carcass or part thereof. (Ga. L. 1969, p. 1028, § 4; Ga. L. 1974, p. 453, § 1; Ga. L. 1982, p. 3, § 26; Ga. L. 1995, p. 244, § 18; Ga. L. 1996, p. 1219, § 7.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 4 Am. Jur. 2d, Animals, § 42. 35A Am. Jur. 2d, Food, §§ 13, 33.      **C.J.S.** — 3A C.J.S., Animals, § 69. 36A C.J.S., Food, § 12.

**26-2-104. Inspection of carcasses, parts, meat, and meat products brought into or returned to slaughtering or packing establishments; limitations on entry of carcasses, parts, meat, and meat products.**

(a) Code Sections 26-2-102 and 26-2-103 shall apply to all carcasses or parts of carcasses of cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules, and other equines, or the meat or meat products thereof, capable of use as human food, which may be brought into any slaughtering, meat-canning, salting, packing, rendering, or similar establishment where inspection under this part is maintained; and such

examination and inspection shall be had before the carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products.

(b) Code Sections 26-2-102 and 26-2-103 shall also apply to all such products which, after having been issued from any such slaughtering, meat-canning, salting, packing, rendering, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained.

(c) The Commissioner may limit the entry of carcasses, parts of carcasses, meat, and meat food products, and other materials into any establishment at which inspection under this part is maintained, under such conditions as he may prescribe, to assure that allowing the entry of such articles into such inspected establishments will be consistent with the purposes of this article. (Ga. L. 1969, p. 1028, § 5; Ga. L. 1974, p. 453, § 1; Ga. L. 1995, p. 244, § 19; Ga. L. 1996, p. 1219, § 8.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 4 Am. Jur. 2d, Animals, § 42. 35A Am. Jur. 2d, Food, §§ 13, 33.      **C.J.S.** — 3A C.J.S., Animals, § 69. 36A C.J.S., Food, § 12.

#### **26-2-105. Inspection of meat food products where prepared; inspection markings; disposition of condemned meat food products; removal of inspectors.**

(a) The Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all meat food products prepared in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment where such articles are prepared for commerce.

(b) For the purpose of any examination and inspection, said inspectors shall have access at all times, by day or night, whether the establishment be operated or not, to every part of said establishment.

(c) The inspectors shall mark, stamp, tag, or label as “Inspected and Passed” all such products found to be not adulterated; and said inspectors shall label, mark, stamp, or tag as “Inspected and Condemned” all such products found adulterated; and all such condemned meat food products shall be made unfit for human consumption, as provided for in Code Section 26-2-103. The Commissioner may remove inspectors from any establishment which fails to destroy such condemned meat food products. (Ga. L. 1969, p. 1028, § 6.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 4 Am. Jur. 2d, Animals, § 42. 35A Am. Jur. 2d, Food, §§ 13, 33.      **C.J.S.** — 3A C.J.S., Animals, § 69. 36A C.J.S., Food, § 12.



**26-2-106. Inspection of meat and meat food products in retail and other food service establishments; disposition of condemned meat; sale or display of noninspected meat or meat food products.**

(a) The Commissioner shall periodically require meat inspectors to inspect meat and meat products located within or held for sale or consumption in retail establishments and other food service establishments for the purpose of ascertaining whether the same has been inspected by a federal or state meat inspector. Any meat or meat product which does not appear to have been inspected previously by a federal or state meat inspector shall be labeled as unfit for sale and shall not be sold. Any meat found to be adulterated shall be made unfit for human consumption, as provided for in Code Section 26-2-103. For the purpose of any examination and inspection said inspectors shall have access to every part of said establishment during normal hours of operation or at such other times when meat processing operations are being conducted. Said inspectors shall be accompanied by the owner or his authorized agent.

(b) It shall be unlawful for any retail establishment and other food service establishments to sell or display for sale any meat or meat food products which shall have been found by said inspectors to be adulterated or which have not been inspected by a federal or state meat inspector.

(c) It shall be the responsibility of the consumer protection division field force sanitarian to supervise and enforce this Code section. (Ga. L. 1971, p. 56, § 2.)

**Cross references.** — Promulgation of standards for food service establishments, rules and regulations regarding sanitation § 26-2-373.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, cation of statutes or ordinances relating to inspection of food sold at retail, 127 ALR §§ 13, 33.

**C.J.S.** — 36A C.J.S., Food, § 12. 322.

**ALR.** — Validity, construction, and appli-

**26-2-107. Labeling of meat, meat food products, and carcasses; standards and definitions; use of false or misleading labels or containers.**

(a) When any meat or meat food product which has been inspected as provided for in Code Sections 26-2-102 through 26-2-106, and marked as "Inspected and Passed" shall be placed or packed in any can, pot, tin, canvas, or other receptacle or covering in any establishment where inspection under this article is maintained, the person, firm, or corporation preparing said product shall attach a label to said can, pot, tin, canvas, or other receptacle or covering, under supervision of an inspector, which label shall state that the contents thereof have been "Inspected and Passed" under this article. No inspection and examination of meat or meat food

products deposited or enclosed in cans, tins, pots, canvas, or other receptacles or coverings in any establishment where inspection under this article is maintained shall be deemed to be complete until such meat or meat food products have been sealed or enclosed in said can, tin, pot, canvas, or other receptacle or covering under the supervision of an inspector.

(b) All carcasses, parts of carcasses, meat, and meat food products inspected at any establishment under the authority of this article and found to be not adulterated shall at the time they leave the establishment bear, in distinctly legible form, directly thereon or on their containers, as the Commissioner may require, the information required under paragraph (13) of Code Section 26-2-62.

(c) The Commissioner, whenever he determines such action is necessary for the protection of the public, may prescribe the styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling of any articles or animals subject to this part or to Part 4 of this article; definitions and standards of identity or composition for articles subject to this part and standards of fill of container for such articles not inconsistent with any such standards established under the Federal Food, Drug, and Cosmetic Act or under the Federal Meat Inspection Act; and there shall be consultation between the Commissioner and the secretary of agriculture of the United States prior to the issuance of such standards to avoid inconsistency between such standards and the federal standards.

(d) No article subject to this part shall be sold or offered for sale by any person, firm, or corporation under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size. Established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the Commissioner are permitted.

(e) If the Commissioner has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this part is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the marking, labeling, or container does not accept the determination of the Commissioner, such person, firm, or corporation may request a hearing; but the use of the marking, labeling, or container shall, if the Commissioner so directs, be withheld pending hearing and final determination by the Commissioner. Any hearing conducted pursuant to this subsection shall be in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Ga. L. 1969, p. 1028, § 7.)

## RESEARCH REFERENCES

- Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 24.      quiring notice by label or otherwise of the fact that product is imported or as to place of production, 124 ALR 572.
- C.J.S.** — 36A C.J.S., Food, §§ 12, 23.
- ALR.** — Constitutionality of statutes, re-

**26-2-108. Sanitary inspections of slaughter and packing establishments; sanitation regulations; labeling adulterated meat and meat food products.**

The Commissioner shall cause to be made, by experts in sanitation or by other competent inspectors, such inspection as may be necessary to inform himself or herself about the sanitary conditions of all slaughtering, meat-canning, salting, packing, rendering, or similar establishments in which cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules, and other equines are slaughtered and the meat and meat food products thereof are prepared for commerce. The Commissioner shall prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and, where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered adulterated, the Commissioner shall refuse to allow the meat or meat food products to be labeled, marked, stamped, or tagged as "Inspected and Passed." (Ga. L. 1969, p. 1028, § 8; Ga. L. 1974, p. 453, § 1; Ga. L. 1995, p. 244, § 20; Ga. L. 1996, p. 1219, § 9.)

## JUDICIAL DECISIONS

- Editor's notes.** — Some of the cases cited below were decided under former Code 1910, § 2119.
- Slaughter houses are subject to sanitary regulations.** Schoen Bros. v. Pylant, 162 Ga. 565, 134 S.E. 304, 46 A.L.R. 1480 (1926) (decided under former Code 1910, § 2119, subdivision (3)).

## RESEARCH REFERENCES

- Am. Jur. 2d.** — 4 Am. Jur. 2d, Animals, § 42. 35A Am. Jur. 2d, Food, §§ 6, 13, 33.
- C.J.S.** — 3A C.J.S., Animals, § 69. 36A C.J.S., Food, §§ 4, 12.

**26-2-109. Inspection of animals and food products thereof slaughtered and prepared at nighttime.**

The Commissioner shall cause an examination and inspection of all cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules, and other equines, and the food products thereof, slaughtered and prepared in the establishments described in this part. Such inspection shall be made during the nighttime as well as during the daytime, when the slaughtering of said cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules, and other equines or the preparation of said



food products is conducted during the nighttime. (Ga. L. 1969, p. 1028, § 9; Ga. L. 1974, p. 453, § 1; Ga. L. 1995, p. 244, § 21; Ga. L. 1996, p. 1219, § 10.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 4 Am. Jur. 2d, Animals, § 42. 35A Am. Jur. 2d, Food, §§ 13, 33. **C.J.S.** — 3A C.J.S., Animals, § 69. 36A C.J.S., Food, § 12.

#### **26-2-110. Slaughter, preparation, sale, or transportation of animals, meat, or meat food products generally.**

No person, firm, or corporation shall, with respect to any cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules, or other equines, or any carcasses, parts of carcasses, meat, or meat food products of any such animals:

(1) Slaughter any such animals or prepare any such articles which are capable of use as human food, at any establishment preparing such articles for commerce except in compliance with this article;

(2) Slaughter or handle in connection with such slaughter any such animals in any manner not declared to be humane under Code Section 26-2-110.1;

(3) Sell, transport, offer for sale or transportation, or receive for transportation, in commerce:

(A) Any such articles which:

(i) Are capable of use as human food; and

(ii) Are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or

(B) Any articles required to be inspected under this part unless they have been so inspected and passed; or

(4) With respect to any such articles which are capable of use as human food, do any act while they are being transported in commerce or held for sale after such transportation which is intended to cause or has the effect of causing such articles to be adulterated or misbranded. (Ga. L. 1969, p. 1028, § 10; Ga. L. 1974, p. 453, § 1; Ga. L. 1981, p. 657, § 2; Ga. L. 1995, p. 244, § 22; Ga. L. 1996, p. 1219, § 11.)

#### JUDICIAL DECISIONS

**Editor's notes.** — Some of the cases cited below were decided under former Code 1910, § 2119.

**Slaughter houses are subject to sanitary regulations.** Schoen Bros. v. Pylant, 162 Ga. 565, 134 S.E. 304, 46 A.L.R. 1480 (1926)

(decided under former Code 1910, § 2119, subdivision (3)).

#### RESEARCH REFERENCES

C.J.S. — 36A C.J.S., Food, §§ 25-27.

#### **26-2-110.1. Approved methods for handling and slaughtering of animals; designation by Commissioner of methods of handling and slaughtering.**

(a) For purposes of this article, the following methods of slaughtering and handling are declared to be humane:

(1) In the case of cattle, calves, horses, mules, sheep, swine, ratites, nontraditional livestock, rabbits, and other livestock, all animals are to be rendered insensible to pain by a single blow or gunshot or by an electrical, chemical, or other means which is rapid and effective before being shackled, hoisted, thrown, cast, or cut; or

(2) By slaughtering and handling in connection with such slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.

(b) In addition to the methods prescribed in subsection (a) of this Code section, the Commissioner may designate as humane any methods of slaughtering and handling which have been so designated by the United States secretary of agriculture on or before April 7, 1981, pursuant to United States Code Section 7-1904. The Commissioner is further authorized to designate as humane other methods of slaughtering and handling which have been demonstrated by research, investigation, and experimentation to be humane with reference to the speed and scope of slaughtering operations and with reference to other existing methods and then current scientific knowledge. (Ga. L. 1981, p. 657, § 3; Ga. L. 1995, p. 244, § 23; Ga. L. 1996, p. 1219, § 12.)

#### **26-2-111. Labeling and preparation of carcasses, meat, and meat food products of equines.**

No person, firm, or corporation shall sell, transport, offer for sale or transportation, or receive for transportation, in commerce, any carcasses of horses, mules, or other equines, or parts of such carcasses, or the meat or meat food products thereof unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations promulgated by the Commissioner to show the kinds of animals from which

they were derived. When required by the Commissioner with respect to establishments at which inspection is maintained under this part, such animals and their carcasses, parts thereof, meat, and meat food products shall be prepared in establishments separate from those in which cattle, sheep, swine, rabbits, or goats are slaughtered or their carcasses, parts thereof, meats, or meat food products are prepared. (Ga. L. 1969, p. 1028, § 12; Ga. L. 1974, p. 453, § 1.)

**Cross references.** — For further provisions regarding sale of horse meat, see § 26-2-157 et seq.

#### RESEARCH REFERENCES

**C.J.S.** — 36A C.J.S., Food, §§ 25-27. fact that product is imported or as to place of production, 124 ALR 572.  
**ALR.** — Constitutionality of statutes, requiring notice by label or otherwise of the

#### **26-2-112. Inspection exceptions; labeling and handling of custom slaughtered and prepared meat or meat food products.**

(a) Except as provided in subsection (c) of this Code section, the provisions of this part requiring inspection of the slaughter of animals and the preparation of the carcasses, parts thereof, meat, and meat food products at establishments conducting such operations shall not apply to:

(1) The slaughtering by any person of animals of his or her own raising and the preparation by him or her and transportation in commerce of the carcasses, parts thereof, meat, and meat food products of such animals exclusively for use by him or her and members of his or her household and his or her nonpaying guests and employees;

(2) The custom slaughter by any person, firm, or corporation of cattle, sheep, swine, ratites, nontraditional livestock, rabbits, or goats delivered by the owner thereof for such slaughter and the preparation by such slaughterer and transportation in commerce of the carcasses, parts thereof, meat, and meat food products of such animals exclusively for use in the household of such owner by the owner and members of his or her household and his or her nonpaying guests and employees; nor to the custom preparation by any person, firm, or corporation of carcasses, parts thereof, meat, or meat food products derived from the slaughter by any person of cattle, sheep, swine, ratites, nontraditional livestock, rabbits, or goats of his or her own raising, or from game animals, delivered by the owner thereof for such custom preparation and transportation in commerce of such custom prepared articles, exclusively for use in the household of such owner by him or her and members of his or her household and his or her nonpaying guests and employees, provided that, in cases where such person, firm, or corporation engages in such



custom operations at an establishment at which inspection under this article is maintained, the Commissioner may exempt from such inspection at such establishment any animals slaughtered or any meat or meat food products otherwise prepared on such custom basis. Custom operations at any establishment shall be exempt from inspection requirements as provided by this Code section only if the establishment complies with regulations which the Commissioner is authorized to promulgate to assure that any carcasses, parts thereof, meat, or meat food products, wherever handled on a custom basis, or any containers or packages containing such articles are separated at all times from carcasses, parts thereof, meat, or meat food products prepared for sale; that all such articles prepared on a custom basis or any containers or packages containing such articles are plainly marked "Not for Sale" immediately after being prepared and kept so identified until delivered to the owner; and that the establishment conducting the custom operation is maintained and operated in a sanitary manner; or

(3) The slaughtering and processing of rabbits by any person who raises rabbits for slaughter and processing for sale at wholesale and retail in numbers not to exceed 2,500 rabbits per year.

(b) The provisions of this article requiring inspection of the slaughter of animals and the preparation of carcasses, parts thereof, meat, and meat food products shall not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments.

(c) The slaughter of animals and preparation of articles referred to in paragraph (2) of subsection (a) and in subsection (b) of this Code section shall be conducted in accordance with such sanitary conditions as the Commissioner may by regulations prescribe. Notwithstanding subsection (a) of this Code section, the Commissioner or his delegate is authorized to enter upon the premises of any establishment which is exempt from regular inspections under the provisions of subsection (a) of this Code section and inspect such establishment and any facilities, carcasses, parts thereof, meat, meat food products, containers, and packaging to determine whether such establishment qualifies for exemption from regular inspections and is otherwise in compliance with the laws of this state and the rules and regulations of the Commissioner adopted pursuant thereto.

(d) The adulteration and misbranding provisions of this part, other than the requirement of the inspection legend, shall apply to articles which are not required to be inspected under this Code section. (Ga. L. 1969, p. 1028, § 14; Ga. L. 1971, p. 57, § 1; Ga. L. 1974, p. 453, § 1; Ga. L. 1977, p. 849, §§ 1, 2; Ga. L. 1984, p. 22, § 26; Ga. L. 1989, p. 335, § 1; Ga. L. 1995, p. 244, § 24; Ga. L. 1996, p. 1219, § 13.)

**Law reviews.** — For note on 1989 enactment of this Code section, see 6 Ga. St. U.L. Rev. 253 (1989).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 4 Am. Jur. 2d, Animals, § 42. 35A Am. Jur. 2d, Food, §§ 6, 13, 33. **C.J.S.** — 3A C.J.S., Animals, § 69. 36A C.J.S., Food, §§ 4, 12.

### 26-2-113. Storage and handling regulations for carcasses, meat, and meat food products.

The Commissioner may by regulations prescribe conditions under which carcasses, parts of carcasses, meat, and meat food products of cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules, or other equines, capable of use as human food, shall be stored or otherwise handled by any person, firm, or corporation engaged in the business of buying, selling, freezing, storing, or transporting such articles whenever the Commissioner deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. (Ga. L. 1969, p. 1028, § 15; Ga. L. 1974, p. 453, § 1; Ga. L. 1995, p. 244, § 25; Ga. L. 1996, p. 1219, § 14.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 6, 16. **C.J.S.** — 36A C.J.S., Food, §§ 4, 28.

### 26-2-114. Fraudulent practices.

(a) No brand manufacturer, printer, or other person, firm, or corporation shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the Commissioner.

(b) No person, firm, or corporation shall:

(1) Forge any official device, mark, or certificate;

(2) Without authorization from the Commissioner, use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;

(3) Contrary to the regulations promulgated by the Commissioner, fail to use or to detach, deface, or destroy any official device, mark, or certificate;

(4) Knowingly possess, without promptly notifying the Commissioner or his representative, any official device, or any counterfeit, simulated,

forged, or improperly altered official certificate, or any device or label, or any carcass of any animal, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;

(5) Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the Commissioner; or

(6) Knowingly represent that any article has been inspected and passed or exempted under this article when, in fact, it has, respectively, not been so inspected and passed or exempted. (Ga. L. 1969, p. 1028, § 11.)

#### RESEARCH REFERENCES

**C.J.S.** — 36A C.J.S., Food, §§ 12, 23.

fact that product is imported or as to place of production, 124 ALR 572.

**ALR.** — Constitutionality of statutes, requiring notice by label or otherwise of the

#### **26-2-115. Use of "Georgia" in trademark, trade name, service mark, or advertisement.**

(a) It shall be unlawful for any person, partnership, firm, or corporation to use the word "Georgia" in any trademark, trade name, service mark, or advertisement in connection with any meat or meat food product which is not equal to or better than U.S. grade "good."

(b) Any person who violates this Code section shall be guilty of a misdemeanor. (Ga. L. 1971, p. 757, § 1.)

**Cross references.** — Trademarks, service marks, and trade names generally, § 10-1-440 et seq.

#### **26-2-116. Applicability of part to federally inspected slaughtering and packing establishments.**

The ante mortem, post-mortem, and sanitary inspection services provided for in this part are not required at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment at which such services are furnished by the United States Department of Agriculture pursuant to the Federal Meat Inspection Act. (Ga. L. 1969, p. 1028, § 32.)

**U.S. Code.** — The Federal Meat Inspection Act, referred to in this section, is codified at 21 U.S.C. § 601 et seq.



## RESEARCH REFERENCES

C.J.S. — 36A C.J.S., Food, § 8.

## PART 4

## MEAT PROCESSORS AND RELATED INDUSTRIES

**Cross references.** — Regulation of business of rendering and disposal plants, § 44-40 et seq.

**26-2-130. Buying, selling, transportation, or receiving of dead, dying, disabled, or diseased animals.**

No person, firm, or corporation engaged in the business of buying, selling, or transporting in commerce dead, dying, disabled, or diseased animals, or any parts of the carcasses of any such animals, shall buy, sell, transport, offer for sale or transportation, or receive for transportation any dead, dying, disabled, or diseased cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules, or other equines, or parts of the carcasses of any such animals, unless such transaction or transportation is made in accordance with such regulations as the Commissioner may promulgate, to assure that such animals, or the unwholesome parts or products thereof, will be prevented from being used for human food purposes. (Ga. L. 1969, p. 1028, § 19; Ga. L. 1974, p. 453, § 1; Ga. L. 1995, p. 244, § 26; Ga. L. 1996, p. 1219, § 15.)

**Cross references.** — Disposal of carcasses of animals which die on premises of public livestock sales markets, livestock slaughter establishments, and garbage feeding operations, § 4-5-7.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 4 Am. Jur. 2d, Animals, § 42. 35A Am. Jur. 2d, Food, §§ 5, 33. **C.J.S.** — 3A C.J.S., Animals, §§ 67-69, 74. 36A C.J.S., Food, §§ 4, 16.

**26-2-131. Registration of dealers in dead, dying, diseased, or disabled animals.**

No person, firm, or corporation shall engage in business as a meat broker, renderer, or animal food manufacturer or engage in business as a wholesaler of any carcasses, or parts or products of the carcasses, of any cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules, or other equines, whether intended for human food or other purposes, or engage in business as a public warehouseman storing any such articles, or engage in the business of buying, selling, or transporting in commerce any dead, dying, disabled, or diseased animals of the specified kinds, or parts of such carcasses of any such animals unless, when required by regulations of

the Commissioner, he or she has registered with the Commissioner his or her name and the address of each place of business at which, and all trade names under which, he or she conducts such business. (Ga. L. 1969, p. 1028, § 18; Ga. L. 1974, p. 453, § 1; Ga. L. 1995, p. 244, § 27; Ga. L. 1996, p. 1219, § 16.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 4 Am. Jur. 2d, Animals, § 42. 35A Am. Jur. 2d, Food, § 33.

**C.J.S.** — 3A C.J.S., Animals, §§ 67-69, 74. 36A C.J.S., Food, § 16.

#### 26-2-132. Maintenance and inspection of records.

(a) The following classes of persons, firms, and corporations shall keep such records as will fully and correctly disclose all transactions involved in their businesses; and all persons, firms, and corporations subject to such requirements shall, at all reasonable times, upon notice by a duly authorized representative of the Commissioner, afford such representative and any duly authorized representative of the secretary of agriculture of the United States accompanied by such representative of the Commissioner access to their places of business and opportunity to examine the facilities, inventory, and records thereof, to copy all such records, and to take reasonable samples of their inventory upon payment of the fair market value therefor:

(1) Any persons, firms, or corporations that engage for commerce in the business of slaughtering any cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules, or other equines or preparing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of any such animals for use as human food or animal food;

(2) Any persons, firms, or corporations that engage in the business of buying or selling (as meat brokers, wholesalers, or otherwise) or transporting in commerce or storing in or for such commerce any carcasses, or parts or products of carcasses, of any such animals; and

(3) Any persons, firms, or corporations that engage in business as renderers or engage in the business of buying, selling, or transporting any dead, dying, disabled, or diseased cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules, or other equines, or parts of such carcasses.

(b) Any record required to be maintained by this Code section shall be maintained for such period of time as the Commissioner may by regulations prescribe. (Ga. L. 1969, p. 1028, § 17; Ga. L. 1974, p. 453, § 1; Ga. L. 1995, p. 244, § 28; Ga. L. 1996, p. 1219, § 17.)

RESEARCH REFERENCES

Am. Jur. 2d. — 4 Am. Jur. 2d, Animals, § 32. 35 Am. Jur. 2d, Food, §§ 13, 35. C.J.S. — 3A C.J.S., Animals, §§ 67, 69. 36A C.J.S., Food, §§ 12, 13.

26-2-133. Identification of carcasses, meat, or meat food products not intended for human use.

No person, firm, or corporation shall buy, sell, transport, offer for sale or transportation, or receive for transportation any animal, carcasses, or parts thereof, meat, or meat food products of any such animals, which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the Commissioner or are naturally inedible by humans. (Ga. L. 1969, p. 1028, § 16.)

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Food, § 33. C.J.S. — 36A C.J.S., Food, § 16.

ARTICLE 4

ADVERTISEMENT AND SALE OF MEAT GENERALLY

**Cross references.** — Authority of Commissioner of Agriculture to impose penalty in lieu of other action, § 2-2-10. False advertising generally, § 10-1-420 et seq.

**Administrative rules and regulations.** — Additional Resolutions Applicable to the

Sale of Meat by Weight and Food Service Contracts, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Agriculture, Food Division Regulations, Chapter 40-7-11.

26-2-150. Legislative intent.

The General Assembly declares that purchasers and consumers have a right to expect and demand honesty and fair practices in the sale of meat for human consumption. It is the purpose of this Code section and Code Sections 26-2-151 through 26-2-154 to ensure that honest, fair, and ethical practices are followed in the advertising and sale of meat for human consumption and to authorize the Commissioner of Agriculture to take all actions necessary to ensure that such practices are followed. The General Assembly views with alarm the fact that misleading and false advertising and sales tactics have been used in the sale of meat to Georgia consumers. It is to stop these practices that the General Assembly has enacted this Code section and Code Sections 26-2-151 through 26-2-154. The consumer has a right to know what he is buying and the true cost of the meat which he is purchasing for consumption. (Ga. L. 1974, p. 1030, § 1; Ga. L. 2003, p. 140, § 26.)



The 2003 amendment, effective May 14, 2003, part of an Act to revise, modernize, and correct the Code, substituted “this Code section and Code Sections 26-2-151 through

26-2-154” for “Code Sections 26-2-150 through 26-2-154” in the second and fourth sentences in this section.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Advertising, § 4. 35A Am. Jur. 2d, Food, §§ 24, 33.

C.J.S. — 36A C.J.S., Food, §§ 12, 23.

26-2-151. Promulgation of rules and regulations regarding deceptive advertising of meat.

The Commissioner of Agriculture is authorized to promulgate and adopt rules and regulations necessary or convenient to carry out Code Section 26-2-150, this Code section, and Code Sections 26-2-152 through 26-2-154 and to prevent the deceptive advertising of meat. (Ga. L. 1974, p. 1030, § 4; Ga. L. 2003, p. 140, § 26.)

The 2003 amendment, effective May 14, 2003, part of an Act to revise, modernize, and correct the Code, substituted “Code Section 26-2-150, this Code section, and

Code Sections 26-2-152 through 26-2-154” for “Code Sections 26-2-150 through 26-2-154”.

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Food, §§ 6, 33.

C.J.S. — 36A C.J.S., Food, § 4.

26-2-152. Advertisement or sale of beef, pork, and lamb; “bait and switch” advertising.

(a) It shall be unlawful for any person, partnership, firm, company, or corporation to advertise, sell, or offer for sale any carcass cuts of beef, pork, or lamb without prominently disclosing the price per pound of such beef, pork, or lamb in all such advertisements or on the packaging or display case in which the meat is displayed or offered for sale. This Code section shall not apply to the sale of beef, pork, or lamb when sold for immediate consumption on the premises or where sold as an unpackaged, cooked food or where sold for purposes other than for human consumption.

(b) It shall be unlawful for any person, partnership, firm, company, or corporation to employ “bait and switch” advertising or sales techniques in connection with the sale of beef, pork, or lamb or to use any other advertising or sales technique which is calculated to deceive, or which in fact deceives, purchasers of beef, pork, or lamb as to what they are purchasing or its quality or quantity. “Bait and switch” as used in this subsection shall mean, but shall not be limited to, the advertising of products with the intent not to sell the products as advertised; or advertising products with the intent not to supply reasonably expected public demand,

unless the advertisement discloses a limitation of quantity; or advertising a product which by accepted standards is inferior, with the expectation of switching the consumer to a product of accepted standard at a higher price. (Ga. L. 1974, p. 1030, § 2.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 37 Am. Jur. 2d, Fraud and Trade-Marks, Trade-Names, and Unfair Deceit, § 79. Competition, § 348 et seq.  
**C.J.S.** — 36A C.J.S., Food, § 12. 87 C.J.S.,

#### 26-2-153. Sale of partial or whole carcasses.

It shall be unlawful for any person, partnership, firm, company, or corporation to advertise, sell, or offer for sale any quarter, half, three-quarters, or whole animal carcass for use as food for human consumption without disclosing in such advertisement and to the purchaser at the time of sale the minimum number of pounds of retail cuts contained in such quarter, half, three-quarters, or whole animal carcass. In determining the minimum number of pounds of red meat from such carcass, the person, partnership, firm, company, or corporation shall refer to currently effective United States Department of Agriculture charts and tables of yield grades. (Ga. L. 1974, p. 1030, § 3.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 24. **C.J.S.** — 36A C.J.S., Food, §§ 14, 23.

#### 26-2-154. Penalty for violation of Code Sections 26-2-150 through 26-2-153.

Any person, partnership, firm, company, or corporation violating the provisions of Code Sections 26-2-150 through 26-2-153 or any rule or regulation adopted by the Commissioner of Agriculture pursuant to Code Sections 26-2-150 through 26-2-153 shall be guilty of a misdemeanor. (Ga. L. 1974, p. 1030, § 5.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 65 et seq. violation of food law as affected by ignorance or mistake of fact, lack of criminal intent, or presence of good faith, 152 ALR 755.  
**C.J.S.** — 36A C.J.S., Food, §§ 30, 39-49.  
**ALR.** — Penal offense predicated upon

#### 26-2-155. Food service establishment display of information if serving imported beef.

(a) All food service establishments in this state, as defined in Code Section 26-2-370, which serve carcass beef, or cuts derived from such

carcass, imported from a foreign country, shall conspicuously display or attach to their menus the words: "We serve beef imported from a foreign country."

(b) Any person, firm, or corporation who violates this Code section shall be guilty of a misdemeanor. (Ga. L. 1972, p. 917, §§ 1, 2.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 65 et seq.

**C.J.S.** — 36A C.J.S., Food, §§ 30, 39-49. 87 C.J.S., Trade-Marks, Trade-Names, and Unfair Competition, § 348 et seq.

**ALR.** — Penal offense predicated upon violation of food law as affected by ignorance or mistake of fact, lack of criminal intent, or presence of good faith, 152 ALR 755.

#### 26-2-156. Slaughter of horses for human consumption or other purposes.

(a) No person, partnership, association, corporation, or firm shall slaughter a horse in this state for the purpose of selling or offering for sale for human consumption or for other than human consumption the horse meat derived from such slaughtered animal unless:

(1) Such horse shall have remained on the business premises for at least four consecutive days prior to its slaughter;

(2) The vehicle license plate number and state of issue of any motor vehicle and any trailer used to transport such horse to the business premises is recorded and retained at such premises;

(3) An identifying description of such horse is maintained at such premises;

(4) The person delivering or selling the horse or horses is identified by his driver's license number and address and said number is recorded on the bill of sale; and

(5) Satisfactory records, pursuant to rules and regulations of the Department of Agriculture, are kept to show information required in paragraphs (1) through (3) of this subsection.

(b) Any person, partnership, association, corporation, or firm violating this Code section shall be guilty of a misdemeanor. (Ga. L. 1979, p. 846, §§ 1, 3.)

**Cross references.** — Labeling and preparation of carcasses, meat, and meat food products of horses, mules, etc., § 26-2-111.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 13, 18, 33, 65 et seq.

**C.J.S.** — 36A C.J.S., Food, § 6, 8, 12, 30, 39-49.



**26-2-157. Sale of horse meat — Sign; label.**

No horse meat shall be sold or offered for sale in this state for human consumption unless at the place of sale there shall be posted in a conspicuous location a sign bearing the words "HORSE MEAT FOR SALE." No sausage, ground meat, canned, or processed meat containing horse meat shall be sold for human consumption unless the package bears a label stating the proportionate amount of horse meat contained therein and unless there is likewise kept and maintained in a conspicuous place a sign showing that the meat offered for sale contains horse meat. (Ga. L. 1943, p. 475, § 2.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 18, 33.

**C.J.S.** — 36A C.J.S., Food, §§ 6, 17, 23.

**ALR.** — Constitutionality of statutes, requiring notice by label or otherwise of the fact that product is imported or as to place of production, 124 ALR 572.

Validity, construction, and application of statutes or ordinances relating to inspection of food sold at retail, 127 ALR 322.

Validity and construction of statutes, ordinances, or regulations concerning the sale of horse meat for human consumption, 19 ALR2d 1013.

**26-2-158. Sale of horse meat — Seller to inform purchaser.**

It shall be unlawful for any person, firm, or corporation to sell horse meat in any form for human consumption unless the person, firm, or corporation selling the meat shall inform the purchaser thereof at the time of sale that the purchaser is obtaining horse meat. (Ga. L. 1943, p. 475, § 3.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 18, 33.

**C.J.S.** — 36A C.J.S., Food, §§ 6, 23.

**ALR.** — Validity, construction, and application of statutes or ordinances relating to inspection of food sold at retail, 127 ALR 322.

Validity and construction of statutes, ordinances, or regulations concerning the sale of horse meat for human consumption, 19 ALR2d 1013.

**26-2-159. Promulgation of regulations.**

The Department of Agriculture is authorized to promulgate proper regulations for the carrying out of Code Sections 26-2-157 and 26-2-158, this Code section, and Code Sections 26-2-160 and 26-2-161 and to assist prosecuting attorneys in the enforcement thereof. (Ga. L. 1943, p. 475, § 4; Ga. L. 2003, p. 140, § 26.)

**The 2003 amendment**, effective May 14, 2003, part of an Act to revise, modernize, and correct the Code, substituted "Code Sections 26-2-157 and 26-2-158, this Code

section, and Code Sections 26-2-160 and 26-2-161” for “Code Sections 26-2-157 through 26-2-161” near the middle of this Code section.

**Code Commission notes.** — Pursuant to

Code Section 28-9-5, in 2003, inserted “Code Sections” preceding “26-2-157 and 26-2-158” near the middle of this Code section.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 6, 33.

**C.J.S.** — 36A C.J.S., Food, §§ 4, 6.

**ALR.** — Validity and construction of stat-

utes, ordinances, or regulations concerning the sale of horse meat for human consumption, 19 ALR2d 1013.

### 26-2-160. Sale of dog meat for human consumption; label on packages.

It shall be unlawful for any person, firm, or corporation to distribute or offer for sale for human consumption any dog meat in the State of Georgia; and all dog meat sold in this state for any purpose, other than human consumption, shall be sold in packages only. The packages shall carry a label showing the contents, for what use it is intended, and stating that said contents are “NOT FOR HUMAN CONSUMPTION.” The words “not for human consumption” shall be in conspicuous type. (Ga. L. 1943, p. 475, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 33.

**C.J.S.** — 36A C.J.S., Food, § 16.

**ALR.** — Constitutionality of statutes, requiring notice by label or otherwise of the

fact that product is imported or as to place of production, 124 ALR 572.

Validity, construction, and application of statutes or ordinances relating to inspection of food sold at retail, 127 ALR 322.

### 26-2-161. Penalty for violations of Code Section 26-2-157, 26-2-158, 26-2-159, or 26-2-160.

Any person, firm, or corporation violating the terms of Code Section 26-2-157, 26-2-158, 26-2-159, or 26-2-160 shall be guilty of a misdemeanor and, upon conviction thereof shall be fined an amount not exceeding \$1,000.00 or imprisoned for a period not exceeding 12 months, or both, at the discretion of the court. (Ga. L. 1943, p. 475, § 5; Ga. L. 1982, p. 3, § 26.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 65 et seq.

**C.J.S.** — 36A C.J.S., Food, §§ 39-49.

**ALR.** — Penal offense predicated upon

violation of food law as affected by ignorance or mistake of fact, lack of criminal intent, or presence of good faith, 152 ALR 755.

Validity and construction of statutes, ordi-

nances, or regulations concerning the sale of horse meat for human consumption, 19 ALR2d 1013.

Recovery of cumulative statutory penalties, 71 ALR2d 986.

## ARTICLE 5

### ANIMALS SUSPECTED OF BEARING ANY RESIDUE CAUSING CONTAMINATED MEAT

**Cross references.** — Authority of Commissioner of Agriculture to impose penalty in lieu of other action, § 2-2-10.

#### 26-2-180. Definitions.

As used in this article, the term:

(1) "Commissioner" means the Commissioner of Agriculture.

(2) "Contaminate" means to cause the loss of wholesomeness for human consumption. (Ga. L. 1976, p. 335, § 1.)

#### 26-2-181. Promulgation of rules and regulations.

The Commissioner is authorized to promulgate rules and regulations to govern the sampling and inspection of animals, poultry, and products quarantined or detained pursuant to this article and to implement and enforce this article. (Ga. L. 1976, p. 335, § 5.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 6, 13, 33, 61.      **C.J.S.** — 36A C.J.S., Food, §§ 4, 12, 13.

#### 26-2-182. Animals, poultry, or products thereof suspected of bearing substance causing contamination — Inspection and quarantine; notice to owners or keepers.

(a) The Commissioner or his duly authorized representative is authorized to inspect and quarantine or detain upon the premises where found any animals, poultry, or animal and poultry products suspected of bearing or containing a residue of any pesticide, insecticide, herbicide, drug, or any substance that would cause the resultant meat or product to be deemed contaminated.

(b) Notice of the quarantine or detention shall be given to the owners or keepers of said animals, poultry, or products and to the owners or operators of the premises where the suspected contaminated matter is found. (Ga. L. 1976, p. 335, § 2.)



**Cross references.** — Quarantine and inspection duties of Commissioner pertaining to prevention of spread of parasitic livestock diseases, § 4460 et seq.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 6, 13, 33, 61. **C.J.S.** — 36A C.J.S., Food, §§ 4, 12, 13, 15, 16.

### **26-2-183. Animals, poultry, or products thereof suspected of bearing substance causing contamination — Sampling; removal from quarantine on order of Commissioner.**

All animals, poultry, or animal and poultry products suspected of bearing or containing a contaminating residue shall be quarantined or detained at the premises where found until sufficient sampling conducted under the authority of the Commissioner has been completed to determine that the resultant meat or product is wholesome and fit for human consumption. No such animal, poultry, or product shall be moved from quarantine or detention except by order of the Commissioner. (Ga. L. 1976, p. 335, § 3.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 13, 33. **C.J.S.** — 36A C.J.S., Food, §§ 13, 16.

### **26-2-184. Animals, poultry, or products thereof suspected of bearing substance causing contamination — Destruction; compliance with federal tolerances.**

If animals, poultry, or animal and poultry products quarantined or detained contain such contaminating residue that remains in excess of a safe level for human consumption, the Commissioner is authorized to order the animals, poultry, or animal and poultry products to be destroyed in a manner prescribed for the particular contaminating residue. Tolerances established by the United States Food and Drug Administration shall be complied with in enforcing this and other Code sections of this article. (Ga. L. 1976, p. 335, § 4.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 61. **C.J.S.** — 36A C.J.S., Food, § 50.

### **26-2-185. Injunctions.**

In addition to the remedies provided in this article and notwithstanding the existence of any other remedy at law and notwithstanding the pendency of any criminal prosecution, the Commissioner is authorized to apply to the

superior courts of this state for injunctive relief. Such courts shall have the jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction or ex parte restraining order enjoining or restraining the violation or continuation of a violation of this article or for the failure or refusal to comply with this article or any rule or regulation promulgated under this article. (Ga. L. 1976, p. 335, § 7.)

# RESEARCH REFERENCES

C.J.S. — 36A C.J.S., Food, § 29.

## 26-2-186. Penalties.

Any person who violates this article or the rules and regulations promulgated under this article shall be guilty of a misdemeanor. (Ga. L. 1976, p. 335, § 6.)

# RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Food, § 65 et seq. C.J.S. — 36A C.J.S., Food, §§ 39-49.

## ARTICLE 6

### MEAT, POULTRY, AND DAIRY PROCESSING PLANTS

**Cross references.** — Authority of Commissioner of Agriculture to impose penalty in lieu of other action, § 2-2-10. Hatchery operators and dealers, Ch. 7, T. 4. Regulation of sanitary conditions of meat, poultry, and dairy processing plants, § 26-2-200 et seq.

## 26-2-200. Definitions.

As used in this article, the term:

- (1) “Commissioner” means the Commissioner of Agriculture.
- (2) “Meat” or “meat products” means the carcass or part of any carcass of any animal or fowl or any by-product thereof in any form.
- (3) “Meat, poultry, or dairy processing plant” means: any abattoir, slaughterhouse, poultry killing or processing plant, milk depot, milk processing plant, or any other establishment for the killing, storage, dressing, manufacture, preparation, or processing of any animal, fowl, or dairy product or any by-product thereof for human consumption.
- (4) “Person” means any person, firm, corporation, or association of persons, or combination thereof. (Ga. L. 1956, p. 748, § 1.)

## JUDICIAL DECISIONS

**Editor's notes.** — Some of the cases cited below were decided under former Code 1910, § 2119.

**Slaughter houses** are subject to sanitary regulations. *Schoen Bros. v. Pylant*, 162 Ga. 565, 134 S.E. 304, 46 A.L.R. 1480 (1926) (decided under former Code 1910, § 2119, subdivision (3)).

**Wildlife club which processed meat and game** for its members was a "meat, poultry, or dairy processing plant" within the meaning of O.C.G.A. § 26-2-200(3). *Aaron v. Irvin*, 259 Ga. 353, 381 S.E.2d 35 (1989).

## OPINIONS OF THE ATTORNEY GENERAL

**Definition of private processing plants which must have licenses.** — A license is necessary for the operation of a meat, poultry, or dairy processing plant in this state where livestock is grown or fed out, slaughtered and sold for human consumption by the owner. 1957 Op. Att'y Gen. p. 1.

**Includes private dairies.** — Places manufacturing dairy products such as frozen desserts, which include ice cream, frozen custard, ice milk, milk sherbet, and similar products containing milk or milk

by-products are subject to be licensed as provided in O.C.G.A. Title 26, Chapter 2. 1957 Op. Att'y Gen. p. 1.

**State-owned ice cream parlor not "dairy" requiring license.** — A State Park Authority, created as a body corporate and politic and deemed to be an instrumentality of the state and a public corporation, is not required to obtain a dairy processing plant license to operate an ice cream parlor. 1958-59 Op. Att'y Gen. p. 5.

## RESEARCH REFERENCES

**ALR.** — Seller's duty to ascertain at his peril that articles of food conform to food regulations, 28 ALR 1385.

## 26-2-201. Supervision and control of sanitary conditions in dairies and meat, poultry, and dairy processing plants; designation of inspectors.

(a) The Commissioner shall have supervision and control over the sanitary conditions of all dairies and meat, poultry, or dairy processing plants in this state.

(b) The Commissioner shall maintain an adequate system of inspection and shall employ or designate qualified personnel to assist in the administration of this article. He shall fix the compensation of all personnel employed by him.

(c) The Commissioner is also vested with the authority to designate licensed veterinarians and city or county health authorities as inspectors as he deems advisable. (Ga. L. 1914, p. 148, § 1; Code 1933, §§ 42-401, 42-402; Ga. L. 1956, p. 748, §§ 2, 10.)



## JUDICIAL DECISIONS

**Editor's notes.** — Some of the cases cited below were decided under former Code 1910, § 2119.

**Slaughter houses are subject to sanitary**

**regulations.** Schoen Bros. v. Pylant, 162 Ga. 565, 134 S.E. 304, 46 A.L.R. 1480 (1926) (decided under former Code 1910, § 2119, subdivision (3)).

## OPINIONS OF THE ATTORNEY GENERAL

**Milk processor who sells only to military installation still subject to state sanitary regulations.** — A person operating a milk processing plant in this state which is not a part of or in conjunction with a military installation of the United States in this state is subject to the sanitary regulations and jurisdiction of the Department of Agriculture,

even if the person processes only for sales to military installations. 1960-61 Op. Att'y Gen. p. 4.

**Whether violation of provisions of O.C.G.A. § 26-2-212 could be punished as for misdemeanor as provided for in O.C.G.A. § 26-2-215 is questionable.** 1960-61 Op. Att'y Gen. p. 396.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 6 et seq., 33, 39, 44.

**C.J.S.** — 36A C.J.S., Food, §§ 4, 9, 12.

**ALR.** — Constitutionality of regulations as to milk, 42 ALR 556; 58 ALR 672; 80 ALR 1225; 101 ALR 64; 110 ALR 644; 119 ALR 243; 155 ALR 1383.

Power to prescribe the manner or conditions under which a slaughterhouse shall serve the public, 46 ALR 1486.

Validity of municipal ordinance imposing requirements on outside producers of milk to be sold in city, 14 ALR2d 103.

## 26-2-202. Promulgation of rules and regulations.

(a) The Commissioner is authorized to adopt rules and regulations to carry out this article.

(b) The Commissioner shall adopt sanitary standards and specifications that are not less than those recognized and approved by the United States Department of Agriculture or the United States Department of Health and Human Services for like products and premises. (Ga. L. 1914, p. 148, § 1; Code 1933, § 42-401; Ga. L. 1956, p. 748, § 3.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 6, 33, 39.

**C.J.S.** — 36A C.J.S., Food, § 4.

## 26-2-203. Power of inspection.

In the performance of his duties, the Commissioner or any of his duly authorized representatives is authorized to enter and inspect, at any reasonable time, any dairy, or any meat, poultry, or dairy processing plant, or any vehicle where any dairy, animal, or poultry product, any by-product thereof, or any part thereof is held, stored, transported, or offered for sale.

(Ga. L. 1914, p. 148, § 3; Code 1933, § 42-403; Ga. L. 1956, p. 748, § 8; Ga. L. 2003, p. 140, § 26.)

The 2003 amendment, effective May 14, 2003, part of an Act to revise, modernize, and correct the Code, revised punctuation in this Code section.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 33, 44. 1225; 101 ALR 64; 110 ALR 644; 119 ALR 243; 155 ALR 1383.

**C.J.S.** — 36A C.J.S., Food, § 12.

**ALR.** — Constitutionality of regulations as to milk, 42 ALR 556; 58 ALR 672; 80 ALR 1225; 101 ALR 64; 110 ALR 644; 119 ALR 243; 155 ALR 1383. Power to prescribe the manner or conditions under which a slaughterhouse shall serve the public, 46 ALR 1486.

#### **26-2-204. Inspection of dairy, meat, or poultry plants; correction of unsanitary conditions; take and test samples; evidentiary value thereof.**

The Commissioner shall cause to be inspected at such times as he may deem proper each dairy and each meat, poultry, or dairy processing plant within this state. He shall require the correction of all unsanitary conditions found therein. He may take samples of dairy, poultry, or meat products or parts or portions thereof and cause them to be analyzed or tested by the state chemist. Such analyses or test records shall be preserved by the Commissioner and when sworn to by the state chemist shall be prima-facie evidence of violations of this article, rules and regulations, or standards or specifications adopted pursuant to this article. (Ga. L. 1914, p. 148, § 3; Code 1933, § 42-403; Ga. L. 1956, p. 748, § 7.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 6, 13, 33, 44, 72. **C.J.S.** — 36A C.J.S., Food, §§ 12, 13, 47.

#### **26-2-205. Wholesomeness inspection of meat, poultry, and dairy products offered for sale; inspection of livestock slaughtered; marking system to be employed for inspection purposes; adoption of standards and specifications; exception.**

The Commissioner is authorized to adopt and maintain an adequate system of wholesomeness inspection as to all meat, poultry, or dairy products offered for sale in this state. He shall be authorized to employ or designate qualified personnel necessary to maintain such inspection program. The Commissioner is authorized to require an ante mortem and post-mortem inspection of all livestock slaughtered by licensees under this article for sale as food in this state. He shall be authorized to adopt an appropriate marking system so as to identify those carcasses of animals inspected and passed as fit for human consumption. The Commissioner is authorized to adopt standards and specifications for meat, poultry, and

dairy products and the processing thereof. Nothing contained in this Code section shall be applicable to any person slaughtering livestock or poultry or processing meat, poultry, or dairy products for home consumption. (Ga. L. 1959, p. 168, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 6, 13, 33, 39, 44.      **C.J.S.** — 36A C.J.S., Food, §§ 4, 12.

#### **26-2-206. Wholesomeness inspection of meat, poultry, or dairy processing plants on cost basis or less.**

The Commissioner is authorized to make the wholesomeness inspection provided in Code Section 26-2-205 available to meat, poultry, or dairy processing plants licensed under this article on the basis of actual costs. He is further authorized when sufficient funds are available to make such service available without cost. (Ga. L. 1959, p. 168, § 2.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 33, 44.      **C.J.S.** — 36A C.J.S., Food, § 12.

#### **26-2-207. Dairy equipment and premises to be maintained in clean and sanitary condition; supply of clean, pure water; adequate drainage.**

No person shall operate a dairy within this state unless the equipment and premises shall be maintained in a clean and sanitary condition. Each dairy shall have an adequate supply of clean, pure water and an adequate supply of clean, hot water and adequate drainage of the premises. (Ga. L. 1956, p. 748, § 4.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 20.      **C.J.S.** — 36A C.J.S., Food, §§ 16, 24.

#### **26-2-208. Sale, offer for sale, or possession of dairy, animal, or poultry products, under other than sanitary conditions; when conditions other than sanitary deemed to exist.**

(a) No person, firm, or corporation shall sell, offer for sale, or have in his possession for sale any dairy, animal, or poultry product or any by-product thereof that has been produced, manufactured, transported, handled, stored, or processed under other than sanitary conditions.



(b) Conditions other than sanitary shall be deemed to exist where any or all of the following conditions exist:

(1) Premises, buildings, handling or storage space, or equipment, in a state of decay;

(2) Floors and side walls or other parts of any space of building covered or coated with decaying matter;

(3) Sufficient insect screens not provided or maintained;

(4) Insufficient drainage;

(5) Inadequate supply of pure water;

(6) Inadequate supply of hot water;

(7) Any animal or fowl held on the premises in unsanitary lots, pens, or cages or fed uncooked animal offal; or

(8) Where putrid odors exist.

(c) The enumeration of these conditions shall not be exclusive and the Commissioner shall determine whether unsanitary conditions exist. (Ga. L. 1914, p. 148, § 2; Code 1933, § 42-402; Ga. L. 1956, p. 748, § 6.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 6, 20, 33, 66.

**C.J.S.** — 36A C.J.S., Food, §§ 4, 16, 24-27.

**ALR.** — Validity, construction, and application of statutes or ordinances relating to

inspection of food sold at retail, 127 ALR 322.

Recovery for loss of business resulting from resale of unwholesome food or beverages furnished by another, 17 ALR2d 1379.

#### **26-2-209. License for meat and dairy processing plants; fees; term of validity; revocation or suspension; notice and hearing.**

To assure the protection of the consuming public, no person shall operate a meat or dairy processing plant in this state without having first obtained a license from the Commissioner. The original license fee shall be \$10.00 and the renewal fee shall be \$10.00 per annum. The license shall be valid from January 1 to December 31 of the year in which it was issued or until revoked as provided in this article. Any such license may be revoked or suspended by the Commissioner for the violation of this article or rules and regulations or sanitary standards and specifications adopted pursuant to this article. The Commissioner shall notify the licensee of the reasons why he intends to revoke or suspend the license and the licensee shall be entitled to a hearing before the Commissioner within ten days after receipt of such notice of intention to revoke or suspend. At such hearing the Commissioner shall consider the circumstances and shall give the licensee reasonable time to correct the conditions or circumstances that caused the

notice of intention to revoke or suspend the license to be given. (Ga. L. 1956, p. 748, § 5.)

### JUDICIAL DECISIONS

**Wildlife club which processed meat and game** for its members was a processing plant which was required to be licensed under

O.C.G.A. § 26-2-209. *Aaron v. Irvin*, 259 Ga. 353, 381 S.E.2d 35 (1989).

### OPINIONS OF THE ATTORNEY GENERAL

**Operators of plants where livestock grown or prepared for human food must obtain license.** — A license is necessary for the operation of a meat, poultry, or dairy processing plant in this state where livestock is grown or fed out, slaughtered and sold for human consumption by the owner. 1957 Op. Att'y Gen. p. 1.

**Manufacturers of milk products, including frozen desserts.** — Places manufacturing dairy products such as frozen desserts, which include ice cream, frozen custard, ice milk,

milk sherbet, and similar products containing milk or milk by-products are subject to be licensed (see O.C.G.A. Ch. 2, T. 26). 1957 Op. Att'y Gen. p. 1.

**State Park Authority operating ice cream parlor.** — A State Park Authority, created as a body corporate and politic and deemed to be an instrumentality of the state and a public corporation, is not required to obtain a dairy processing plant license to operate an ice cream parlor. 1958-59 Op. Att'y Gen. p. 5.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 11, 33, 44, 45.

**C.J.S.** — 36A C.J.S., Food, § 12.

**ALR.** — Right of one who acquires title to,

or other interest in, real property to benefit of a license previously issued by the public, permitting use of property for a specified purpose, 131 ALR 1339.

### 26-2-210. License for poultry processing plants; fees; display at place of business; transferability; suspension or revocation; notice and hearing; registration.

To assure the protection of the consuming public, no person shall operate a poultry processing plant in this state without having first obtained a license from the Commissioner. The fee for such license shall be fixed by the Commissioner in an amount not to exceed \$10.00. The license shall be conspicuously displayed in each place of business. The license shall not be transferable. The license of any person who ceases operation for a period of 90 days or more shall automatically be revoked. Any such license may be revoked or suspended by the Commissioner for the violation of this article or rules and regulations or sanitary standards and specifications adopted pursuant to this article. The Commissioner shall notify the licensee of the reasons why he intends to revoke or suspend the license and the licensee shall be entitled to a hearing before the Commissioner within ten days after receipt of such notice of intention to revoke or suspend. At such hearing the Commissioner shall consider the circumstances and shall give the

licensee reasonable time to correct the conditions or circumstances that caused the notice of intention to revoke or suspend the license to be given. All licensees who operate a poultry processing plant in this state which is not covered under the provisions of the United States Department of Agriculture poultry inspection program shall register with the Commissioner on or before January 1 of each year at no cost to the licensee. (Ga. L. 1970, p. 186, § 1.)

#### RESEARCH REFERENCES

**ALR.** — Right of one who acquires title to, or other interest in, real property to benefit of a license previously issued by the public, permitting use of property for a specified purpose, 131 ALR 1339.

#### **26-2-211. Statistics on animals and poultry slaughtered; maintenance of records.**

The Commissioner shall maintain a system by which accurate statistics regarding the disposition of all animals or poultry slaughtered for human consumption in this state by licensees may be obtained. He shall require that each licensee maintain adequate records so as to ascertain the total number of animals or poultry slaughtered, processed, or disposed of and the amount of meat, poultry, or dairy products received or processed by him. (Ga. L. 1914, p. 148, § 4; Code 1933, § 42-405; Ga. L. 1956, p. 748, § 9.)

#### **26-2-212. County and municipal ordinances dealing with meats, poultry, and dairy products.**

Nothing in this article shall prevent the governing authority of any county or municipal corporation from adopting ordinances or resolutions providing for the inspection of meats, poultry, meat or poultry food products, and dairy products sold within its limits and to provide penalties for violation thereof; but no such ordinance or resolution shall conflict with any power or authority of the Commissioner or his representatives; provided, however, that no county or municipal corporation shall adopt sanitary standards or specifications that are less than those adopted by the Commissioner. (Ga. L. 1914, p. 148, § 5; Code 1933, § 42-406; Ga. L. 1956, p. 748, § 10.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Violation of section might not be punishable as misdemeanor.** — Whether a violation of the provisions of former Code 1933, § 42-406 (see O.C.G.A. § 26-2-212) could be punished as for a misdemeanor as provided for in O.C.G.A. § 26-2-215 is questionable. 1960-61 Op. Att'y Gen. p. 396.



## RESEARCH REFERENCES

**ALR.** — Constitutionality of regulations as to milk, 42 ALR 556; 58 ALR 672; 80 ALR 1225; 101 ALR 64; 110 ALR 644; 119 ALR 243; 155 ALR 1383.

Validity of municipal ordinance imposing

requirements on outside producers of milk to be sold in city, 14 ALR2d 103.

Dairy, creamery, or milk distributing plant, as nuisance, 92 ALR2d 974.

**26-2-213. Injunctions.**

In addition to the remedies provided in this article and notwithstanding the existence of any remedy at law, the Commissioner is authorized to apply to the superior court and such court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction, restraining order, or both, restraining any person from violating or continuing to violate this article or for failing or refusing to comply with the requirements of this article or any rule or regulation adopted by the Commissioner pursuant to this article. No ex parte restraining order shall be issued without bond. (Ga. L. 1959, p. 168, § 3.)

## RESEARCH REFERENCES

**C.J.S.** — 36A C.J.S., Food, § 29.

**26-2-214. Inspection of federally inspected meat, poultry, or dairy products; exception for horse slaughter operations.**

(a) This article shall in no way be construed to apply or require further inspection of meat, poultry, or dairy products in this state when meat, poultry, or dairy products are required to be inspected by inspectors of the United States Department of Agriculture, provided the Georgia Department of Agriculture may inspect any business operations involving the slaughter of horses in this state for the purpose of selling or offering for sale the horse meat derived therefrom in order to enforce certain restrictions relating to such slaughter.

(b) Any person, partnership, association, corporation, or firm violating this Code section, including but not limited to refusing to permit an inspection authorized by this Code section, shall be guilty of a misdemeanor. (Ga. L. 1959, p. 168, § 4; Ga. L. 1979, p. 846, § 2.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 10 et seq., 33, 45, 65 et seq.

**C.J.S.** — 36A C.J.S., Food, §§ 6, 8, 12, 30, 39-49.

**ALR.** — Penal offense predicated upon violation of food law as affected by ignorance or mistake of fact, lack of criminal intent, or presence of good faith, 152 ALR 755.

**26-2-215. Penalty.**

Any person who violates this article or rules and regulations adopted under this article or any sanitary standards or specifications adopted under this article shall be guilty of a misdemeanor. (Ga. L. 1914, p. 134, § 2; Code 1933, § 42-9908; Ga. L. 1956, p. 748, § 11.)

**OPINIONS OF THE ATTORNEY GENERAL**

Whether a violation of the provisions of former Code 1933, § 42-406 (see O.C.G.A. § 26-2-212) could be punished as for a misdemeanor as provided for in former Code

1933, § 42-9908 (see O.C.G.A. § 26-2-215) was questionable. 1960-61 Op. Att'y Gen. p. 396.

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 65 et seq.

**C.J.S.** — 36A C.J.S., Food, §§ 39-49.

**ALR.** — Penal offense predicated upon violation of food law as affected by ignorance

or mistake of fact, lack of criminal intent, or presence of good faith, 152 ALR 755.

Recovery for loss of business resulting from resale of unwholesome food or beverages furnished by another, 17 ALR2d 1379.

**ARTICLE 7****MILK AND MILK PRODUCTS**

**Cross references.** — Imposition of monetary penalty rather than suspension, § 2-2-10. Southern Dairy Compact, Ch. 20, T. 2.

**Administrative rules and regulations.** — Sanitation, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Agriculture, Milk and Milk Products, Chapter 40-2-4.

Dry Milk, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Agriculture, Milk and Milk Products, Chapter 40-2-6.

Ice Cream-Standards and Requirements, Official Compilation of the Rules and Regu-

lations of the State of Georgia, Georgia Department of Agriculture, Milk and Milk Products, Chapter 40-2-7.

Ice Cream, Frozen Desserts and Related Products Regulations and Enforcement, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Agriculture, Milk and Milk Products, Chapter 40-2-8.

Ice Cream, Frozen Desserts and Related Products, Sanitation Standards, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Agriculture, Milk and Milk Products, Chapter 40-2-9.

**26-2-230. Short title.**

This article shall be known and may be cited as the "Georgia Dairy Act of 1980." (Ga. L. 1980, p. 981, § 1.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § § 6, 39, 40.

**C.J.S.** — 36A C.J.S., Food, § § 4, 6, 15.

**ALR.** — What amounts to sale of milk to "public" within statutory regulations as to milk, 111 ALR 725.

Construction and application of regulations as to milk, 122 ALR 1062.

**26-2-231. Definitions.**

(a) As used in this article, the term:

(1) “Commissioner” means the Commissioner of Agriculture for the State of Georgia.

(2) “Cream tester” means any person who performs the act of sampling or testing milk, cream, or other dairy products, the test of which is to be used as a basis for making payment for said products.

(3) “Dairy manufacturing plants” means creameries, condenseries, public dairies, butter factories, cheese factories, ice cream factories, and other like factories, and any other concerns that manufacture dairy products for sale at either retail or wholesale; provided, however, that the term dairy manufacturing plant shall not include a retail frozen dessert packager which is otherwise permitted as a food service establishment pursuant to Article 13 of this chapter.

(4) “Department” means the Department of Agriculture of the State of Georgia.

(5) Reserved.

(6) Reserved.

(7) “Manufactured milk products” means those milk products, including condensed, evaporated, concentrated, sterilized, or powdered milk, made from raw whole milk for manufacturing purposes and processed in such a manner and under such conditions as to remove or sterilize, as far as is possible, any contaminated matter contained in the raw milk from which the products were manufactured, under such rules and regulations as may be prescribed to ensure that result.

(8) Reserved.

(9) Reserved.

(10) “Person” means any individual, partnership, firm, company, or corporation.

(11) “Public dairies” means any place where milk and cream are purchased from producers and sold or kept for sale, either at wholesale or retail.

(12) “Raw whole milk for manufacturing purposes” means fluid whole milk in its natural state from healthy cows, which milk has not been produced and handled in compliance with the requirements for Grade A milk.



(13) Reserved.

(14) “Ungraded milk” means all fluid whole milk in its natural state, which milk fails to meet the requirements of Grade A milk or raw whole milk for manufacturing purposes as defined in this article.

(b) Unless otherwise defined in this article, the following words shall have the meanings respectively ascribed to them in the May, 2001, Amended Version of the Grade A Pasteurized Milk Ordinance Recommendations of the United States Public Health Service — Food and Drug Administration and supplements thereto:

- (1) “Raw cow’s milk”;
- (2) “Grade A whole milk”;
- (3) “Grade A milk, pasteurized”;
- (4) “Grade A skim milk”;
- (5) “Grade A buttermilk”;
- (6) “Grade A chocolate milk”;
- (7) “Grade A modified solids milk”; and
- (8) “Pasteurization.”

(c) Unless otherwise defined in this article, the following words shall have the meanings respectively ascribed to them in “Frozen Desserts,” 21 C.F.R. Sec. 135.3, 21 C.F.R. Sec. 135.110 — 135.160 (1979):

- (1) “Ice cream”;
- (2) “Frozen custard”;
- (3) Reserved;
- (4) “Sherbet”; and

(5) “Water ices.” (Ga. L. 1929, p. 280, § 2; Code 1933, § 42-502; Ga. L. 1935, p. 167, § 2; Ga. L. 1937, p. 725, § 1; Ga. L. 1961, p. 501, §§ 1, 3-5; Ga. L. 1980, p. 981, § 2; Ga. L. 1992, p. 1279, § 1; Ga. L. 1999, p. 638, § 1; Ga. L. 2000, p. 1291, § 1; Ga. L. 2002, p. 815, § 2; Ga. L. 2003, p. 140, § 26.)

**The 2002 amendment**, effective July 1, 2002, substituted “2001” for “1999” in the introductory language of subsection (b).

**The 2003 amendment**, effective May 14,

2003, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (b).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 6, 40.

**C.J.S.** — 36A C.J.S., Food, §§ 4, 15.

**ALR.** — Constitutionality of regulations as

to milk, 42 ALR 556; 58 ALR 672; 80 ALR 1225; 101 ALR 64; 110 ALR 644; 119 ALR 243; 155 ALR 1383.

Construction and application of regulations as to milk, 122 ALR 1062.

## 26-2-232. Duties of Commissioner generally.

(a) The Commissioner is charged with the responsibility of enforcing this article.

(b) It shall be the duty of the Commissioner or his authorized representative:

(1) To inspect or cause to be inspected, as often as may be deemed practicable, all creameries, public dairies, condenseries, butter factories, cheese factories, ice cream factories, or any other places where dairy products are produced, manufactured, kept, handled, stored, or sold;

(2) To prohibit the production, sale, or distribution of unclean or unwholesome milk, cream, butter, cheese, ice cream, or other dairy products;

(3) To condemn for food purposes all unclean or unwholesome dairy products, wherever found;

(4) To take samples anywhere of any dairy product or imitation thereof and cause the same to be analyzed or satisfactorily tested;

(5) To weigh and test milk, cream, and other dairy products for the purpose of ascertaining the percentage and weight of butterfat or other ingredients contained therein; provided, however, that it shall not be necessary for the Commissioner to perform the tests if they are being performed by an agency of the federal government;

(6) To inspect and make tests of any instrument or equipment used in the testing or measuring of milk, cream, or other dairy products; and

(7) To compile and publish annually, or at such shorter intervals as he may desire, statistics and information concerning all phases of the dairy industry in this state. (Ga. L. 1929, p. 280, §§ 1, 19; Code 1933, §§ 42-503, 42-501; Ga. L. 1935, p. 167, § 2; Ga. L. 1961, p. 501, § 9; Ga. L. 1980, p. 981, § 3.)

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the provisions, decisions under former Code 1933, § 42-511 and Ga. L. 1961, p. 501, are included in the annotations for this section.

**Constitutionality of milk regulations.** — The production, distribution and sale of milk to the general public is a business that

vitaly affects the public, and therefore subject to legislative control and regulation. *Bohannon v. Duncan*, 185 Ga. 840, 196 S.E. 897 (1938) (decided under former Code 1933, Ch. 42-5).

**Purpose of section to protect health and prevent fraud.** — The purpose of Code 1933, §§ 42-511 and Ga. L. 1961, p. 501 (see

O.C.G.A. §§ 26-2-230, 26-2-231, 26-2-233), is to fix standards of sanitation in the production, handling, distribution and marketing of milk and milk products, to protect the health of the consumers of milk and milk products, and to prevent fraud and deception in the marketing of such products by assuring that labels affixed to or printed on containers reveal the exact nature of the product. *Department of Agric. v. Quality Food Prods., Inc.*, 224 Ga. 585, 163 S.E.2d 704 (1968) (decided under former Code 1933, § 42-511).

**Limitations on commissioner's authority**

**under section.** — Nothing contained in Code 1933, § 42-511 and Ga. L. 1961, p. 501 (see O.C.G.A. §§ 26-2-232, 26-2-233), authorizes the commissioner to do more by rule and regulation than define and set standards for all milk and milk products, and to approve labels to be affixed to or printed upon the containers in which such products are offered for sale. *Department of Agric. v. Quality Food Prods., Inc.*, 224 Ga. 585, 163 S.E.2d 704 (1968) (decided under former Code 1933, §§ 42-511 and Ga. L. 1961, p. 501).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 6, 13, 44.

**C.J.S.** — 36A C.J.S., Food, §§ 4, 6, 12, 13.

**ALR.** — Constitutionality of regulations as to milk, 42 ALR 556; 58 ALR 672; 80 ALR

1225; 101 ALR 64; 110 ALR 644; 119 ALR 243; 155 ALR 1383.

Construction and application of regulations as to milk, 122 ALR 1062.

### 26-2-233. Promulgation and amendment of rules and regulations by Commissioner.

(a) The Commissioner shall have the power to adopt, amend, and repeal rules and regulations to implement and enforce this article; provided, however, that all rules and regulations shall be of uniform application; and provided, further, that all rules and regulations shall be adopted, amended, or repealed in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The rules and regulations shall include, but not be limited to, the following:

(1) Rules and regulations to provide for the labeling of milk and milk products in such manner so as to indicate that the milk or milk product complies with this article and the rules and regulations promulgated under this article;

(2) Rules and regulations to prescribe the specifications of all glassware, including, but not limited to, bottles, pipettes, test tubes, and burrettes, and such other instruments as may be used in the testing of milk, cream, or other dairy products; and

(3) Rules and regulations to prescribe the specifications for the installation and operation of recording thermometers on bulk farm tanks.

(b) The Commissioner may include as a part of such rules and regulations the adoption of supplements to and changes in the "Grade A Pasteurized Milk Ordinance" referred to in Code Section 26-2-238. (Ga. L.



1929, p. 280, § 19; Code 1933, § 42-501; Ga. L. 1935, p. 167, § 2; Ga. L. 1961, p. 501, § 14; Ga. L. 1980, p. 981, § 5; Ga. L. 1983, p. 737, § 1; Ga. L. 1985, p. 149, § 26.)

### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the provisions, decisions under former Code 1933, § 42-511 and Ga. L. 1961, p. 501 are included in the annotations for this section.

**Constitutionality of milk regulations.** — The production, distribution and sale of milk to the general public is a business that vitally affects the public, and therefore subject to legislative control and regulation. *Bohannon v. Duncan*, 185 Ga. 840, 196 S.E. 897 (1938) (decided under former Code 1933, Ch. 42-5).

**Purpose of section to protect health and prevent fraud.** — The purpose of Code 1933, § 42-511 and Ga. L. 1961, p. 501 (see O.C.G.A. §§ 26-2-232, 26-2-233, 26-2-242), is to fix standards of sanitation in the production, handling, distribution and marketing of milk and milk products, to protect the health of the consumers of milk and milk

products, and to prevent fraud and deception in the marketing of such products by assuring that labels affixed to or printed on containers reveal the exact nature of the product. *Department of Agric. v. Quality Food Prods., Inc.*, 224 Ga. 585, 163 S.E.2d 704 (1968) (decided under former Code 1933, § 42-511 and Ga. L. 1961, p. 501).

**Limitations on commissioner's authority under section.** — Nothing contained in Code 1933, § 42-511 and Ga. L. 1961, p. 501 (see O.C.G.A. §§ 26-2-231, 26-2-233), authorizes the commissioner to do more by rule and regulation than define and set standards for milk and milk products, and to approve labels to be affixed to or printed upon the containers in which such products are offered for sale. *Department of Agric. v. Quality Food Prods., Inc.*, 224 Ga. 585, 163 S.E.2d 704 (1968) (decided under former Code 1933, § 42-511 and Ga. L. 1961, p. 501).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 39, 40, 43.

**C.J.S.** — 36A C.J.S., Food, §§ 6, 15.

**ALR.** — Constitutionality of regulations as to milk, 42 ALR 556; 58 ALR 672; 80 ALR

1225; 101 ALR 64; 110 ALR 644; 119 ALR 243; 155 ALR 1383.

Construction and application of regulations as to milk, 122 ALR 1062.

### 26-2-234. Applications for licenses and permits; duration of licenses; renewal of licenses; procedure for denial, revocation, or suspension of licenses.

Application for all licenses and permits provided for in this article shall be made to the Commissioner on such forms as he may prescribe. All licenses shall be valid for a period of one year unless revoked or suspended as provided in this article. All licenses shall be renewable upon payment of the required fee and submission of all required application forms. The Commissioner may deny, refuse, suspend, or revoke any license, after notice and a hearing, for any violation of or failure to comply with this article or the rules and regulations promulgated hereunder; provided, however, that the hearing shall be held in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1933, § 42-606, enacted by Ga. L. 1961, p. 501, § 11; Ga. L. 1972, p. 947, § 1; Ga. L. 1980, p. 981, § 6.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 6, 24. “public” within statutory regulations as to milk, 111 ALR 725.

**C.J.S.** — 36A C.J.S., Food, §§ 4, 12. Construction and application of regulations as to milk, 122 ALR 1062.

**ALR.** — What amounts to sale of milk to

**26-2-235. License requirements — Cream testers.**

No person shall act as a cream tester unless he is licensed, and it shall be unlawful for any person to employ as a cream tester any person who does not have a license to operate testing apparatus for milk and cream. The license shall be posted in a conspicuous place in plain view of all persons entering the room in which all testing is done. The fee for the license shall be \$5.00. (Ga. L. 1929, p. 280, § 4; Code 1933, § 42-505; Ga. L. 1935, p. 167, § 2; Ga. L. 1980, p. 981, § 7.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 11, 39, 44. **ALR.** — Construction and application of regulations as to milk, 122 ALR 1062.

**C.J.S.** — 36A C.J.S., Food, §§ 6, 12, 15.

**26-2-236. License requirements — Operators of milk and cream buying stations.**

Reserved. Repealed by Ga. L. 1999, p. 638, § 2, effective July 1, 1999.

**Editor's notes.** — This Code section was based on Ga. L. 1929, p. 280, § 14; Code 1933, § 42-515; Ga. L. 1935, p. 167, § 2; Ga. L. 1980, p. 981, § 8.

**26-2-237. License requirements — Milk and cream brokers.**

Reserved. Repealed by Ga. L. 1999, p. 638, § 3, effective July 1, 1999.

**Editor's notes.** — This Code section was based on Ga. L. 1929, p. 280, § 15; Code 1933, § 42-520; Ga. L. 1937, p. 725, § 1; Ga. L. 1980, p. 981, § 9.

**26-2-238. Standards and requirements generally.**

The standards and requirements of the May, 2001, Amended Version of the Grade A Pasteurized Milk Ordinance Recommendations of the United States Public Health Service — Food and Drug Administration and supplements thereto, except as otherwise provided in this article, are expressly adopted as the standards and requirements for this state. Future changes in and supplements to said milk ordinance may be adopted by the Commissioner as a part of the standards and requirements for this state. (Ga. L. 1929, p. 280, § 8; Code 1933, § 42-509; Ga. L. 1980, p. 981, § 10; Ga. L. 1983, p. 737, § 2; Ga. L. 1999, p. 638, § 4; Ga. L. 2000, p. 1291, § 2; Ga. L. 2002, p. 815, § 3; Ga. L. 2003, p. 140, § 26.)

**The 2002 amendment**, effective July 1, 2002, substituted "2001" for "1999" in the first sentence.

**The 2003 amendment**, effective May 14,

2003, part of an Act to revise, modernize, and correct the Code, revised punctuation in this Code section.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 11, 44 et seq.

**C.J.S.** — 36A C.J.S., Food, § 12.

**ALR.** — Constitutionality of regulations as to milk, 42 ALR 556; 58 ALR 672; 80 ALR

1225; 101 ALR 64; 110 ALR 644; 119 ALR 243; 155 ALR 1383.

Construction and application of regulations as to milk, 122 ALR 1062.

### 26-2-239. Standards and requirements for frozen desserts generally.

The standards and requirements for standardized frozen desserts, specifically ice cream, frozen custard, sherbet, and water ices, as adopted by the Food and Drug Administration of the United States Department of Health and Human Services and contained in "Frozen Desserts," 21 C.F.R. Sec. 135.3, 21 C.F.R. Sec. 135.110 — 135.160 (1979), except as otherwise provided, are expressly adopted as the standards and requirements for this state. (Code 1933, § 42-612, enacted by Ga. L. 1980, p. 981, § 12; Ga. L. 1999, p. 638, § 5.)

#### JUDICIAL DECISIONS

**Editor's notes.** — Some of the cases cited below were decided under former Code 1933, § 42-511 and Ga. L. 1961, p. 501.

**Purpose of section to protect health and prevent fraud.** — The purpose of Code 1933, § 42-511 and Ga. L. 1961, p. 501 (see O.C.G.A. §§ 26-2-230, 26-2-231, 26-2-233), is to fix standards of sanitation in the production, handling, distribution and marketing of milk and milk products, to protect the

health of the consumers of milk and milk products, and to prevent fraud and deception in the marketing of such products by assuring that labels affixed to or printed on containers reveal the exact nature of the product. *Department of Agric. v. Quality Food Prods., Inc.*, 224 Ga. 585, 163 S.E.2d 704 (1968) (decided under former Code 1933, § 42-511 and Ga. L. 1961, p. 501).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 13, 39, 44.

**C.J.S.** — 36A C.J.S., Food, §§ 6, 12.

**ALR.** — Construction and application of regulations as to milk, 122 ALR 1062.

### 26-2-240. Adulterated ice cream.

(a) Ice cream shall be deemed to be adulterated:

(1) If it contains any preservative, mineral, or other substance or compound deleterious to health; provided, however, that this Code section shall not be construed to prohibit the use of harmless coloring matter when not used for fraudulent purposes;



- (2) If it contains any fats other than milk fat or any oils or paraffin added to, blended with, or compounded with it; provided, however, that chocolate ice cream and the chocolate coating of coated ice cream may contain cocoa butter; or
- (3) If it is made, in whole or in part, from any milk product which is unfit for consumption as food.
- (b) It shall be unlawful for any person to manufacture, sell, offer or expose for sale, or have in possession with intent to sell or offer or expose for sale under the name of "ice cream" any product or substance deemed adulterated under subsection (a) of this Code section. (Ga. L. 1929, p. 280, § 11; Code 1933, § 42-512; Ga. L. 1965, p. 498, § 1; Ga. L. 1980, p. 981, § 13.)

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Food, §§ 6, 10, 39, 48.	Validity, construction, and application of statutes or ordinances relating specifically to ice cream or other frozen milk products, 111 ALR 112.
C.J.S. — 36A C.J.S., Food, §§ 6, 15, 18.	
ALR. — Preservative as adulterant within statute in relation to food, 50 ALR 76.	

26-2-241. Testing of milk, cream, or other dairy products.

In determining the value of milk, cream, or other dairy products by the use of the Babcock test, it shall be unlawful to give any false reading or in any way manipulate the test so as to give a higher or lower percent of butterfat than the milk, cream, or other dairy products actually contain, or to cause any inaccuracy in reading the percent of butterfat by securing from any quantity of milk, cream, or other dairy products to be tested an inaccurate sample for the test. None other than the Babcock method, or such method of testing as may be approved by the Commissioner, may be employed when testing milk or cream, the test of which is to be used as a basis for making payment for the milk or cream thus tested. None other than the torsion balanced scales, or such scales as may be approved by the Commissioner, may be used when weighing cream for testing, when the tests are to be used as a basis for making payment for cream. It shall be unlawful to use adjustable scale weights in determining the weight of cream used in the Babcock test. Only such centrifuge shall be used as shall meet the approval of the Commissioner. Specifications for apparatus and chemicals and directions for testing milk and cream must conform to *Standard Methods for the Examination of Dairy Products*, with such additions as shall be deemed advisable by the Commissioner to make them conform to this article. All test tubes, bottles, pipettes, burettes, or instruments used in connection with testing or determining the value of milk, cream, or other dairy products by the use of the Babcock test must be United States government standard and shall be approved by the Commissioner. All milk

and cream tests shall be maintained at a temperature of 135 to 140 degrees Fahrenheit for at least three minutes before the reading of the percent of butterfat shall be made and recorded. In reading cream tests, glymol or its equivalent must be used, and the samples under test must be held for three minutes in a water bath extending up as high on the graduated neck as the sample itself does. (Ga. L. 1929, p. 280, § 3; Code 1933, § 42-504; Ga. L. 1935, p. 167, § 2; Ga. L. 1951, p. 444, § 1; Ga. L. 1957, p. 628, § 1; Ga. L. 1980, p. 981, § 11; Ga. L. 1999, p. 638, § 6.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1999, “burettes” was substituted for “burrettes” in the seventh sentence.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 6, 11 et seq., 39 et seq., 56 et seq.64. **ALR.** — Construction and application of regulations as to milk, 122 ALR 1062.

**C.J.S.** — 36A C.J.S., Food, §§ 4, 6, 12, 13, 15, 29, 31.

#### **26-2-242. Standards and requirements as to sale of milk and milk products generally; labeling; sale of ungraded milk, raw whole milk, condensed or evaporated milk.**

(a) Milk and milk products which are in compliance with this article and in compliance with the rules and regulations promulgated pursuant to this article may be sold, offered for sale, or delivered to the consuming public for the purpose of human consumption, provided the container in which the milk or milk product is sold, offered for sale, or delivered has affixed thereto or printed thereon labels approved by the Commissioner. No milk or milk product may be sold, offered for sale, or delivered for the purpose of human consumption if it is not in compliance with this article or the standards or rules and regulations prescribed pursuant to this article.

(b) The sale, offering for sale, or delivery of ungraded milk is prohibited.

(c) No raw whole milk for manufacturing purposes may be offered for sale in this state to anyone except processors and manufacturers properly licensed and inspected to manufacture and process manufactured milk products.

(d) It shall be unlawful to sell, keep for sale, or offer for sale any condensed or evaporated milk, concentrated milk, sweetened condensed milk, sweetened evaporated milk, sweetened concentrated milk, sweetened evaporated skimmed milk, or any of the fluid derivatives of any of them, to which shall have been added any fat or oil other than milk fat, either under the name of the products or articles or the derivatives thereof, or under any fictitious or trade name whatsoever. (Code 1933, § 42-614, enacted by Ga. L. 1961, p. 501, §§ 6, 7; Ga. L. 1980, p. 981, § 14.)

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the provisions, decisions under former Codd 1933, § 42-511 and Ga. L. 1961, p. 501, are included in the annotations for this Code section.

**Purpose of section to protect health and prevent fraud.** — The purpose of Code 1933, § 42-511 and Ga. L. 1961, p. 501 (see O.C.G.A. §§ 26-2-232, 26-2-233), is to fix standards of sanitation in the production, handling, distribution and marketing of

milk and milk products, to protect the health of the consumers of milk and milk products, and to prevent fraud and deception in the marketing of such products by assuring that labels affixed to or printed on containers reveal the exact nature of the product. *Department of Agric. v. Quality Food Prods., Inc.*, 224 Ga. 585, 163 S.E.2d 704 (1968) (decided under former Code 1933, § 42-511 and Ga. L. 1961, p. 501).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 39 et seq.

**C.J.S.** — 36A C.J.S., Food, §§ 6, 15.

**26-2-243. Intermingling of Grade A milk or milk products with other grades; inspections; permit requirements; enforcement powers of Commissioner.**

(a) It is the intent and purpose of this Code section to prohibit the intermingling of Grade A milk and Grade A milk products with milk and milk products other than Grade A.

(b) No person producing, handling, processing, manufacturing, or dealing in milk or milk products, which person produces, receives, distributes, or in any manner handles Grade A raw whole milk, Grade A pasteurized whole milk, or Grade A milk products, shall receive, store, handle, distribute, or otherwise allow raw whole milk for manufacturing purposes to be introduced upon the premises where the operations are conducted. At all times, such person shall be subject to inspection by the Commissioner and shall hold a Grade A permit, issued by the Commissioner, to deal in Grade A milk and Grade A milk products and shall conduct business pursuant to the laws of this state and the rules and regulations of the Commissioner made thereunder, to the end that milk products shall be handled only in the manner provided for in this article and that inferior quality milk not be sold to the consuming public as superior quality milk.

(c) No person producing, handling, processing, manufacturing, or dealing in milk or milk products, which person produces, receives, distributes, or in any manner handles raw whole milk for manufacturing purposes, shall introduce any Grade A raw whole milk, Grade A pasteurized milk, or Grade A milk products for other than manufacturing purposes upon the premises where manufactured milk products operations are conducted. At all times such persons shall be subject to inspection by the Commissioner and shall hold a manufacturing permit, issued by the Commissioner, to deal



in manufactured milk products and shall conduct business pursuant to the laws of this state and the rules and regulations of the Commissioner made thereunder, to the end that grades of milk shall be handled only in the manner provided for in this article and that inferior quality milk not be sold to the consuming public as superior quality milk.

(d) The prohibitions contained in subsections (b) and (c) of this Code section shall not be applicable where separate systems and other facilities are provided to maintain the separation and identity of the various grades and types of milk.

(e) After making inspections or conducting appropriate tests, if the Commissioner determines that any law, rule, or regulation has been violated or if he has reason to believe that any of the milk or milk products enumerated in subsections (b) and (c) of this Code section are dangerous for human consumption, the Commissioner, after notice, is authorized to place one or more inspectors on such premises upon a 24 hour basis for such a period of time as he deems necessary to satisfy himself that the laws and rules and regulations are being complied with. The cost of the inspection, to be fixed by the Commissioner at a cost not to exceed the actual cost of the inspection, shall be paid by such person to the Commissioner as a condition to the continued validity of the permit or the license under which the business is operated. The inspection charges provided in this subsection may be terminated by a request to the Commissioner for a hearing within two days after a charge of violation or the placing of the inspectors in the plant. Upon hearing and for cause shown, the Commissioner is authorized to impose the cost of inspection as a part of the penalty imposed. Nothing contained in this subsection shall be construed to prohibit the Commissioner from revoking or canceling any permit or license of any person doing business in this state who violates any of the laws of this state or the regulations made pursuant thereto. (Ga. L. 1929, p. 280, § 19; Code 1933, § 42-501; Ga. L. 1935, p. 167, § 2; Ga. L. 1961, p. 501, § 11; Ga. L. 1978, p. 1988, § 1; Ga. L. 1980, p. 981, § 15.)

### JUDICIAL DECISIONS

**Editor's notes.** — Some of the cases cited below were decided under former Code 1933, § 42-511 and Ga. L. 1961, p. 501.

**Purpose of section to protect health and prevent fraud.** — The purpose of Code 1933, § 42-511 and Ga. L. 1961, p. 501 (see O.C.G.A. §§ 26-2-232, 26-2-233, 26-2-239), is to fix standards of sanitation in the production, handling, distribution and marketing of milk and milk products, to protect the

health of the consumers of milk and milk products, and to prevent fraud and deception in the marketing of such products by assuring that labels affixed to or printed on containers reveal the exact nature of the product. *Department of Agric. v. Quality Food Prods., Inc.*, 224 Ga. 585, 163 S.E.2d 704 (1968) (decided under former Code 1933, § 42-511 and Ga. L. 1961, p. 501).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 45. **C.J.S.** — 36A C.J.S., Food, § 12.

**26-2-244. Standards and conditions for importation of milk and milk products.**

(a) No milk or milk products for human consumption shall be shipped into this state from any other state unless such milk or milk product is produced and handled under sanitary conditions no less adequate for the protection of public health and welfare than the conditions under which milk and milk products are produced, handled, and marketed in this state, and then not until authorization for the shipping of milk or milk products has been issued by the Commissioner after careful investigation; provided, however, that shippers listed on the interstate milk shippers list shall be deemed to be in compliance with this Code section.

(b) Any applicant who is not listed on the interstate milk shippers list but who desires to ship milk or milk products into this state shall furnish certified copies of all laws, rules, and regulations pertaining to the sanitary standards in force in the area where the product which he wishes to bring into this state is produced, processed, handled, and sold, together with certified copies of any and all licenses, permits, certificates, test results, and inspection reports pertaining to the production, processing, marketing, handling, and sale of the milk or milk products. If the Commissioner finds that the milk or milk product is produced, processed, marketed, and handled under sanitary conditions no less adequate than those applicable in this state, he may authorize the shipping of the milk or milk product into this state. If the applicant is unable to comply with this subsection, he may request an inspection under subsection (c) of this Code section.

(c) Upon application from a person who desires authorization to ship any milk or milk product into this state and upon the payment by the person of the amount of actual expense necessary to make an inspection, the Commissioner shall cause an inspection to be made. If, upon inspection, the requirements of this article and the rules and regulations promulgated hereunder are found to be met, the Commissioner shall authorize the shipment of the milk or milk product. (Ga. L. 1929, p. 280, § 20; Code 1933, § 42-518; Ga. L. 1937, p. 725, § 1; Ga. L. 1961, p. 501, § 12; Ga. L. 1980, p. 981, § 17.)

## OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — Some of the opinions cited below were decided under Ga. L. 1961, p. 501.

**Milk import permit deniable only when milk unsanitary or when importer cannot**

**show equal sanitary standards.** — Permits for the importation into Georgia of milk or milk products may be denied by the Commissioner of Agriculture only when the applicant for such permit cannot show that the

sanitary standards for the product in force where it is produced and processed are as adequate as such standards in this state, or when an inspection of the proposed shipment discloses that it does not conform to

the sanitary standards of this state; such permits may not be denied solely to protect domestic producers from foreign competition. 1969 Op. Att'y Gen. No. 69-202 (decided under Ga. L. 1961, p. 501).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food; §§ 8, 39.

**C.J.S.** — 36A C.J.S., Food, §§ 6, 10.

#### **26-2-245. Condemnation and coloring of milk and milk products produced, processed, or delivered in violation of laws of state.**

Any milk or milk product shipped into this state or produced, processed, or delivered in this state in violation of the laws of this state or the rules and regulations promulgated by the Commissioner pursuant thereto shall be condemned by the Commissioner and may be rendered unfit for marketing by the addition of a pyoktanin solution or other approved harmless coloring matter to notify the consuming public that the milk or milk product is ungraded and unfit for human consumption. (Code 1933, § 42-618, enacted by Ga. L. 1937, p. 725, § 1; Ga. L. 1961, p. 501, § 8; Ga. L. 1980, p. 981, § 18.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — Some of the opinions cited below were decided under Ga. L. 1961, p. 501.

**Milk import permit deniable only when milk unsanitary or when importer cannot show equal sanitary standards.** — Permits for the importation into Georgia of milk or milk products may be denied by the Commissioner of Agriculture only when the applicant for such permit cannot show that the

sanitary standards for the product in force where it is produced and processed are as adequate as such standards in this state, or when an inspection of the proposed shipment discloses that it does not conform to the sanitary standards of this state; such permits may not be denied solely to protect domestic producers from foreign competition. 1969 Op. Att'y Gen. No. 69-202 (decided under Ga. L. 1961, p. 501).

#### **26-2-246. Furnishing of records by persons operating under article.**

(a) Any person operating under this article shall furnish, upon the request of the Commissioner, such data and statistics as he may require.

(b) All persons operating under this article shall keep complete and accurate records of their operations, and the Commissioner shall have free access to all such records. (Ga. L. 1929, p. 280, §§ 9, 16; Code 1933, §§ 42-510, 42-517; Ga. L. 1935, p. 167, § 2; Ga. L. 1980, p. 981, § 4.)



## RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 39, 48.

**ALR.** — Construction and application of regulations as to milk, 122 ALR 1062.

**C.J.S.** — 36A C.J.S., Food, § 6.

**26-2-247. Enforcement of article generally.**

(a) The Commissioner shall be charged with the enforcement of this article; and he shall have the power and authority, in connection with this and other provisions dealing with milk, food, or food products, to revoke or cancel the permit or license of any person doing business in this state who violates the laws of this state or the rules and regulations made pursuant thereto.

(b) The enforcement methods authorized by this article shall be cumulative of those provided otherwise by law, and the same are not superseded by this article. (Ga. L. 1929, p. 280, § 19; Code 1933, § 42-501; Ga. L. 1935, p. 167, § 2; Ga. L. 1961, p. 501, § 11; Ga. L. 1978, p. 1988, § 1; Ga. L. 1980, p. 981, § 15.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 45.

**C.J.S.** — 36A C.J.S., Food, § 12.

**26-2-248. Injunctions.**

Any person, firm, or corporation subject to this article and the other milk laws of this state who violates any of said provisions or any valid rules and regulations made thereunder may be enjoined from such continued violation. The Commissioner is authorized to apply for, and for cause shown the superior court having jurisdiction of the defendant in any such action may grant, injunctive relief, by interlocutory injunction, permanent injunction, or temporary restraining order, as the circumstances may warrant. The proceeding may be maintained notwithstanding the pendency of any civil action and notwithstanding the pendency of or conviction in a criminal proceeding arising from the same transaction. Such action may be maintained without bond. The purpose of this Code section is to create a statutory cause of action by way of injunction, and the Commissioner is authorized to bring such proceedings in the same form and manner and in the same court as other equitable proceedings may be brought. This remedy is not exclusive but is cumulative of other remedies afforded to protect the consuming public from unwholesome products which are economic frauds. (Ga. L. 1929, p. 280, § 19; Code 1933, § 42-501; Ga. L. 1935, p. 167, § 2; Ga. L. 1961, p. 501, § 11; Ga. L. 1978, p. 1988, § 1; Ga. L. 1980, p. 981, § 15.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 45.      **C.J.S.** — 36A C.J.S., Food, § 12.

**26-2-249. Unlawful acts.**

It shall be unlawful:

(1) To handle milk, cream, butter, ice cream, or other dairy products in unclean or unsanitary places or in an unsanitary manner;

(2) To keep, store, or prepare for market any milk, cream, or other dairy products in the same building or enclosure where any hide or fur or any cow, horse, ratite, nontraditional livestock, hog, or other livestock is kept;

(3) To handle or ship milk, cream, ice cream, or other dairy products in unclean or unsanitary vessels;

(4) To expose milk, cream, ice cream, or other dairy products to flies or to any contaminating influence likely to convey pathogenic or other injurious bacteria;

(5) For any common carrier, railway, or express company to neglect or fail to remove or ship from its depot, on the day of its arrival there for shipment, any milk, cream, or other dairy products left at the depot for transportation;

(6) For any common carrier, railway, or express company to allow merchandise of a contaminating nature to be stored on or with dairy products;

(7) To use or possess any branded or registered cream can or milk can or ice cream container for any purpose other than the handling, storing, or shipping of milk, cream, or ice cream; provided, however, that no person other than the rightful owner thereof shall use or possess any can, bottle, or other receptacle if such receptacle shall be marked with the brand or trademark of the owner. Nothing in this paragraph shall prohibit the temporary possession by a business involved in the normal processing, distribution, or retail sale of dairy products of any can, bottle, or other receptacle which is marked with the brand or trademark of another person or entity prior to its return to the rightful owner in the normal course of business, or if purchased from the rightful owner;

(8) To sell or offer for sale ice cream from a container or a compartment of a cabinet or fountain which contains any article of food other than ice cream or dairy products;

(9) To sell or offer for sale milk, cream, butter, cheese, ice cream, or other dairy products that are not pure and fresh and handled with clean utensils;

(10) To sell or offer for sale milk or cream from diseased or unhealthy animals or which was handled by any person suffering from or coming in contact with persons affected with any contagious disease;

(11) To sell or offer for sale any milk or cream which shall have been exposed to contamination or into which shall have fallen any unsanitary articles or any foreign substance which would render the milk or cream or the product manufactured therefrom unfit for human consumption;

(12) To sell or offer for sale milk, cream, butter, cheese, ice cream, or other dairy products which do not comply with the standards and requirements of this article or the rules and regulations promulgated hereunder. (Ga. L. 1929, p. 280, § 7; Code 1933, § 42-508; Ga. L. 1935, p. 167, § 2; Ga. L. 1980, p. 981, § 16; Ga. L. 1995, p. 244, § 29; Ga. L. 1996, p. 1219, § 18; Ga. L. 2000, p. 1298, § 1.)

**Law reviews.** — For note on 2000 amendment of O.C.G.A. § 26-2-249, see 17 Ga. St. U.L. Rev. 192 (2000).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 20, 39 et seq., 48.

**C.J.S.** — 36A C.J.S., Food, §§ 4, 6, 12, 16.

**ALR.** — Knowledge or actual negligence on part of seller which is not an element of criminal offense under penal statute relating

to sale of unfit food or other commodity, as condition of civil action in tort in which violation of the statute is relied upon as negligence per se or evidence of negligence, 128 ALR 464.

#### 26-2-250. Penalties for violations of article.

Any person who violates this article shall be guilty of a misdemeanor. (Ga. L. 1931, Ex. Sess., p. 61, § 4; Code 1933, § 42-9914; Ga. L. 1961, p. 501, § 22; Ga. L. 1980, p. 981, § 19.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 65 et seq.

**C.J.S.** — 36A C.J.S., Food, §§ 39-49.

**ALR.** — Penal offense predicated upon

violation of food law as affected by ignorance or mistake of fact, lack of criminal intent, or presence of good faith, 152 ALR 755.

### ARTICLE 8

#### EGGS

**Cross references.** — Imposition of penalty authorized in lieu of other action, § 2-2-10. Regulation by Commissioner of Agriculture of business of hatchery operators and dealers, T. 4, Ch. 7.

**Administrative rules and regulations.** —

Labeling, Inspection Violations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Agriculture, Egg Inspector, Chapter 40-3-1.

Egg Processing Plants, Official Compilation of the Rules and Regulations of the



State of Georgia, Georgia Department of  
Agriculture, Egg Inspection, Chapter 40-3-2.  
Egg Breaking Room Sanitation, Official

Compilation of the Rules and Regulations of  
the State of Georgia, Georgia Department of  
Agriculture, Egg Inspection, Chapter 40-3-3.

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Food,  
§ 39 et seq.

C.J.S. — 36A C.J.S., Foods, §§ 6, 12, 14.

26-2-260. Definitions.

As used in this article, the term:

- (1) “Cold storage” means protected storage in a refrigerated place.
- (2) “Commerce” means interstate, foreign, or intrastate commerce.
- (3) “Commissioner” means the Commissioner of Agriculture of the State of Georgia.
- (4) “Department” means the Department of Agriculture of the State of Georgia.
- (5) “Egg” means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea.
- (6) “Egg handler” means any person who engages in any business in commerce which involves buying or selling any eggs, as a poultry producer or otherwise, processing any egg products, or otherwise using any eggs in the preparation of human food.
- (7) “Egg product” means any dried, frozen, or liquid eggs, with or without added ingredients, except products which contain eggs only in a relatively small proportion or which historically have not been considered by consumers as products of the egg food industry.
- (8) “Quality” means the inherent properties of any product which determine its relative degree of excellence.
- (9) “Wholesaler” means any person, firm, corporation, association, dealer, or broker selling or offering for sale, in or into this state, more than five cases of eggs in any one week. (Ga. L. 1935, p. 364, § 9; Ga. L. 1991, p. 1115, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

For an update of crimes and offenses for  
which the Georgia Crime Information Cen-

ter is authorized to collect and file identify-  
ing data, see 1991 Op. Att’y Gen. No. 91-35.

26-2-261. Classification of eggs.

- (a) Within the intent and purpose of this article, eggs classified as:
  - (1) Storage eggs shall be construed to mean eggs which have been in cold storage for a period of 31 days or longer;

- (2) Fresh eggs shall be construed to mean eggs which have been held in cold storage not longer than 30 days from the date they were packed.
- (b) Each container of eggs must be labeled to show size or weight class and standard of quality.
- (c) All eggs sold or offered for sale by dealers, as designated by this article, shall be graded as to net weight and standards of quality.

(1) The size or weight classes shall be:

Size or Weight Classes	Minimum Net Wt. Per Doz. (Oz.)	Min. Net. Wt. For Indv. Eggs at Rate Per Doz. (Oz.)	Min. Net Wt. Per 30 Doz. (Lbs.)
Jumbo	30	29	56
Extra Large	27	26	50 1/2
Large	24	23	45
Medium	21	20	39 1/2
Small	18	17	34
Pee Wee	15	14	28

The weight tolerance, per dozen, where eggs are sold at retail, shall be not more than two eggs of the minimum net weight for individual eggs at the rate per dozen. Not more than 5 percent tolerance of the minimum net weight for individual eggs at the rate per dozen shall be allowed where eggs are sold in wholesale lots.

(2) The quality classifications for individual eggs shall be:

(A) Grade AA:

- (i) Shell: clean, unbroken, practically normal.
- (ii) Air cell: one-eighth inch or less in depth, unlimited movement, and free or bubbly.
- (iii) Yolk: outline slightly defined, practically free from defects.
- (iv) White: firm, clear.

(B) Grade A:

- (i) Shell: clean, unbroken, practically normal.
- (ii) Air cell: three-sixteenths inch or less in depth, unlimited movement, and free or bubbly.
- (iii) Yolk: outline fairly well defined, practically free from defects.

(iv) White: reasonably firm, clear.

(C) Grade B:

(i) Shell: clean to slightly stained (but not more than one thirty-second of surface if localized or one-sixteenth of surface if scattered), unbroken, abnormal.

(ii) Air cell: over three-sixteenths inch in depth, unlimited movement, and free or bubbly.

(iii) Yolk: outline plainly visible, enlarged and flattened, clearly visible germ development but no blood, other serious defects.

(iv) White: weak and watery, small blood and meat spots present (but not more than one-eighth inch in diameter aggregate).

(d) The U.S. Standards, Grades, and Weight Classes for Shell Eggs, Part 56, Subpart C, Paragraphs 56,216 and 56,217 established pursuant to the federal Agricultural Marketing Act of 1946 are adopted by reference.

(e) All of the classifications indicated in this Code section shall be determined by candling. (Ga. L. 1935, p. 364, § 1; Ga. L. 1937, p. 639, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 49, §§ 1-3; Ga. L. 1956, p. 21, § 1; Ga. L. 1958, p. 27, § 1; Ga. L. 1991, p. 1115, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1996, “three-sixteenths” was substituted for “three-sixteenth” in divisions (c)(2)(B)(ii) and (c)(2)(C)(ii), and “one thirty-second” was substituted for “one-thirtysecond” in division (c)(2)(C)(i).

### OPINIONS OF THE ATTORNEY GENERAL

**Eggs sold by producer at retail must be classified.** — Eggs sold at retail by a producer, including those sold directly to local customers, are subject to the classification requirements. 1970 Op. Att’y Gen. No. U70-98.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 35. **C.J.S.** — 36A C.J.S., Food, § 6.

### 26-2-262. Registration of entities dealing in eggs.

All wholesalers, commission merchants, brokers, retailers, and dealers of any kind or character who desire to sell or offer eggs for sale in this state shall first file with the Commissioner of Agriculture, upon forms furnished by the Commissioner, the name of the firm or person desiring to offer eggs for sale either by themselves or by their agent, together with the address of said firm or person and the type or kind of eggs to be offered for sale. (Ga. L. 1935, p. 364, § 4; Ga. L. 1991, p. 1115, § 1.)



## RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 11, 35.      **C.J.S.** — 36A C.J.S., Food, §§ 6, 12.

**26-2-263. License required for wholesaler or egg handler; grounds for suspension or revocation; transferability; exemption.**

(a) It shall be unlawful for any person to engage in business as a wholesaler or as an egg handler without first obtaining a license from the Commissioner. No license issued under this article shall be suspended or revoked except for health and sanitation reasons or violations of this article and until the licensee to be affected shall be provided with reasonable notice thereof and an opportunity for hearing, as provided under Chapter 13 of Title 50, known as the “Georgia Administrative Procedure Act.” Licenses issued under this article shall be valid until suspended or revoked and shall not be transferable with respect to persons or location. There shall be no fee for such license.

(b) Food sales establishments licensed under Article 2 of this chapter, known as the “Georgia Food Act,” and shell egg handlers registered under the United States Department of Agriculture shell egg surveillance inspection program shall be exempt from the provisions of subsection (a) of this Code section. (Ga. L. 1935, p. 364, § 5; Ga. L. 1958, p. 27, § 2; Ga. L. 1991, p. 1115, § 1; Ga. L. 1992, p. 6, § 26.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 11, 35.      **C.J.S.** — 36A C.J.S., Food, §§ 6, 12.

**26-2-264. Sales by entities dealing in eggs; exemption of producers from taxation and licensing.**

It shall be unlawful for any wholesaler, commission merchant, broker, retailer, or dealer of eggs, either by himself or by his agent, to offer for sale in this state any eggs if this article has not been complied with, provided that nothing in this Code section shall be construed to repeal the exemption given the producer in the sale of commodities of his own production from taxation and licensing by existing laws. (Ga. L. 1935, p. 364, § 6; Ga. L. 1991, p. 1115, § 1.)

## OPINIONS OF THE ATTORNEY GENERAL

**Eggs sold at retail by producer subject to classification requirements.** — Eggs sold at retail by a producer, including those sold directly to local customers, are subject to the classification requirements. 1970 Op. Att’y Gen. No. U70-98.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 11, 35.      **C.J.S.** — 36A C.J.S., Food, §§ 6, 12.

**26-2-265. Dealer's invoices of sales to be furnished to Department of Agriculture on request; exception for sales to consumers.**

All dealers, wholesale or retail, shall be required to furnish to the Department of Agriculture upon request a copy of the invoice of each sale of eggs, the copy of invoice to show the person or firm to whom the sale was made, the address of such person or firm, and the kind and quantity involved in such sale, provided that nothing contained in this Code section shall be construed to require the filing of a copy of the invoice of a sale to a consumer. (Ga. L. 1935, p. 364, § 8; Code 1981, § 26-2-266; Code 1981, § 26-2-265, as redesignated by Ga. L. 1991, p. 1115, § 1.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 35.      **C.J.S.** — 36A C.J.S., Food, § 6.

**26-2-266. Inspectors and assistants; confiscation and destruction of eggs found unfit for human consumption.**

(a) The Commissioner of Agriculture shall instruct the agricultural sanitarians and agricultural inspectors of the Department of Agriculture to carry out this article. The Commissioner is authorized in his discretion to select and appoint such other additional assistants as in his judgment he deems necessary to enforce this article.

(b) All such employees of the Department of Agriculture are authorized to confiscate and destroy all eggs found to be unfit for human consumption. (Ga. L. 1935, p. 364, § 10; Code 1981, § 26-2-267; Code 1981, § 26-2-266, as redesignated by Ga. L. 1991, p. 1115, § 1.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 6, 13, 35, 61.      **C.J.S.** — 36A C.J.S., Food, §§ 4, 6, 12, 50.

**26-2-267. Promulgation of rules, regulations, grades, and standards; powers of inspectors.**

The Commissioner of Agriculture is authorized to promulgate, issue, and set up such additional rules, regulations, grades, standards, or otherwise as in his judgment are necessary to carry out the intent and purpose of this article. The sanitarians and inspectors authorized in Code Section 26-2-266 are authorized to exercise all the authority, powers, and privileges now

delegated to the duly authorized food inspectors of the Department of Agriculture by existing law. (Ga. L. 1935, p. 364, § 11; Code 1981, § 26-2-268; Code 1981, § 26-2-267, as redesignated by Ga. L. 1991, p. 1115, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 6, 13, 35.      **C.J.S.** — 36A C.J.S., Food, §§ 4, 6, 12.

#### **26-2-268. Information labels affixed to cases of eggs.**

(a) At the time of packing and candling of each case of eggs, the producer or dealer shall affix a label not less than two inches by four inches or not less than eight square inches on one end of each case and on this label shall be legibly printed or stamped, in letters not less than one-fourth of an inch in size, the date when the eggs were packed and candled or the expiration date, which shall not exceed 45 days from the date packed; the size and grade of the eggs; and either the name and address of the packer or the U.S.D.A. assigned plant number or a state approved plant identification code. The name of the state of origin may be given. When eggs are sold in cartons, the cartons must show the date packed or the expiration date, which shall not exceed 45 days from the date packed, and the grade and size, together with either the name and address of the packer or the U.S.D.A. assigned plant number or a state approved plant identification code. The state of origin may also be given.

(b) Abbreviations of any words in the classification or in designating the grade and size shall not be permitted. The information pertaining to the grade and size shall be shown in legible letters not less than one-fourth of an inch in size. The information pertaining to the name and address of the packer or the U.S.D.A. assigned plant number or a state approved plant identification code and the date packed or expiration date shall be legibly given. All wording on egg cases and egg cartons must be in the English language and must have prior approval from the Georgia Department of Agriculture before using.

(c) Words or phrases tending to becloud or nullify the proper classification of eggs shall not be permitted. Each word of the classification, including the name of the state of origin, shall appear in the same size type and color in any printed advertisement. Abbreviations of any word in the classification or in designating the size and grade to which eggs belong shall not be permitted. Every person advertising eggs for sale, at retail or wholesale, in newspapers, by window displays, or otherwise shall set forth in the advertisement the classification as to size and grade of the eggs offered for sale. The classification shall be set forth in letters equal in size to those advertising the eggs for sale. (Ga. L. 1935, p. 364, § 2; Ga. L. 1937, p. 639, § 3; Ga. L. 1958, p. 27, § 2; Ga. L. 1980, p. 690, § 1; Code 1981, § 26-2-269;



Code 1981, § 26-2-268, as redesignated by Ga. L. 1991, p. 1115, § 1; Ga. L. 2003, p. 223, § 1.)

**The 2003 amendment**, effective May 22, 2003, substituted “45 days” for “30 days” twice in subsection (a).

**Cross references.** — False advertising generally, § 10-1-420 et seq.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 24 et seq., 35.

**C.J.S.** — 36A C.J.S., Food, §§ 6, 12, 23.

### 26-2-269. Placard to be displayed; contents.

All eggs offered for sale at retail shall be properly classified in accordance with the following specifications:

(1) A heavy cardboard or placard, not less than eight by eleven inches, shall be conspicuously displayed at all times on or over each receptacle containing eggs offered for sale, setting forth in letters not less than one inch in height, plainly and legibly, the classification as to quality and weight;

(2) The name of the state of origin of eggs may appear on the placard;

(3) The placard shall not be required when eggs are packed in properly labeled cartons. The eggs therein shall be required to come up to the standard as placarded; and

(4) Restaurants, hotels, or other eating places shall be required to display a placard where it can be easily seen by customers or, in lieu thereof, to place this information on the menu. (Ga. L. 1937, p. 639, § 3; Ga. L. 1953, Jan.-Feb. Sess., p. 49, § 4; Ga. L. 1958, p. 27, § 2; Code 1981, § 26-2-270; Code 1981, § 26-2-269, as redesignated by Ga. L. 1991, p. 1115, § 1.)

### OPINIONS OF THE ATTORNEY GENERAL

**Eggs sold at retail by producer subject to classification requirements.** — Eggs sold at retail by a producer, including those sold

directly to local customers, are subject to the classification requirements. 1970 Op. Att’y Gen. No. U70-98.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 24 et seq., 35.

**C.J.S.** — 36A C.J.S., Food, §§ 6, 12, 23.

**ALR.** — Constitutionality of statutes, re-

quiring notice by label or otherwise of the fact that product is imported or as to place of production, 124 ALR 572.

**26-2-270. Reciprocal marketing agreement to vary labeling requirements.**

The Commissioner of Agriculture is authorized to enter into reciprocal marketing agreements with other states to vary the labeling requirements provided in this article. Such agreements shall not vary the standards of quality and weights provided in this article, it being the purpose and intent of this Code section to promote and encourage interstate marketing of eggs and to authorize variations of labeling as required in this article where such variations will promote and encourage the marketing of eggs. (Ga. L. 1958, p. 27, § 3; Code 1981, § 26-2-271; Code 1981, § 26-2-270, as redesignated by Ga. L. 1991, p. 1115, § 1.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 6, 35. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 6 et seq. **C.J.S.** — 36A C.J.S., Food, §§ 4, 6. 81A C.J.S., States, § 31.

**26-2-271. “Withhold From Sale Orders”; cost of inspection and release.**

(a) Inspectors or sanitarians of the Department of Agriculture, upon determining that this article or the rules and regulations promulgated for its enforcement are being violated, may put “Withhold From Sale Orders” on all eggs being sold or offered for sale in violation of this article or the regulations thereof and shall report the circumstances to the Commissioner of Agriculture for his action.

(b) Eggs upon which “Withhold From Sale Orders” have been issued shall not be sold or otherwise disposed of until such “Withhold From Sale Orders” have been canceled by the Commissioner or his duly authorized agents. The cost of the inspection and release shall be paid by the offender. (Ga. L. 1937, p. 639, § 3; Code 1981, § 26-2-272; Code 1981, § 26-2-271, as redesignated by Ga. L. 1991, p. 1115, § 1.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 13, 35. **C.J.S.** — 36A C.J.S., Food, §§ 6, 12.

**26-2-272. Licensing of candlers and graders of eggs; promulgation of rules and regulations regarding qualifications; temporary work without license.**

Each candler and grader of eggs offered for sale shall obtain a license from the Department of Agriculture at no cost, after demonstrating to the satisfaction of the department his capability and qualifications as an egg candler and grader. The Commissioner of Agriculture is authorized to establish by rule and regulation the minimum qualifications for egg

candlers and graders. With the approval of the Commissioner, any person may candle and grade eggs not to exceed 14 days, pending licensing by the department, provided that during this period the employer of such temporary candler and grader shall be accountable for the actions of such candler and grader while acting in such capacity. (Ga. L. 1956, p. 21, § 2; Code 1981, § 26-2-273; Code 1981, § 26-2-272, as redesignated by Ga. L. 1991, p. 1115, § 1.)

RESEARCH REFERENCES

<p><b>Am. Jur. 2d.</b> — 35A Am. Jur. 2d, Food, §§ 6, 11, 35.</p> <p><b>C.J.S.</b> — 36A C.J.S., Food, §§ 4, 6, 12.</p>	<p><b>ALR.</b> — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.</p>
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26-2-273. Refrigeration and other handling requirements.

(a) All shell egg producers shall refrigerate eggs upon gathering such eggs. Eggs shall be graded and packed within a reasonable period of time from gathering.

(b) After washing, processing, and packaging, eggs shall be transported, stored, and displayed at an ambient temperature not to exceed 45 degrees Fahrenheit until sold at retail or used by any commercial establishment or public institution. (Code 1981, § 26-2-273, enacted by Ga. L. 1991, p. 1115, § 1.)

<p><b>Code Commission notes.</b> — Pursuant to Code Section 28-9-5, in 1991, “Fahrenheit” was substituted for “Farenheit” in subsection (b).</p>	<p>§ 1, redesignated former Code Section 26-2-273 as present Code Section 26-2-272, and enacted the present Code Section 26-2-273.</p>
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**Editor’s notes.** — Ga. L. 1991, p. 1115,

26-2-274. Penalty; duty of prosecuting attorneys to prosecute violations.

Any person, firm, or corporation who violates any provisions of this article shall be guilty of a misdemeanor. It shall be the duty of the prosecuting attorney of the appropriate court to prosecute all persons charged with the violation of this article as soon as the evidence has been transmitted to them by the Commissioner of Agriculture. (Ga. L. 1935, p. 364, § 12; Ga. L. 1991, p. 1115, § 1.)

RESEARCH REFERENCES

<p><b>Am. Jur. 2d.</b> — 35A Am. Jur. 2d, Food, § 65 et seq.</p> <p><b>C.J.S.</b> — 36A C.J.S., Food, §§ 39-49.</p> <p><b>ALR.</b> — Penal offense predicated upon</p>	<p>violation of food law as affected by ignorance or mistake of fact, lack of criminal intent, or presence of good faith, 152 ALR 755.</p>
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## ARTICLE 9

## GRAINS AND BREAD

**Cross references.** — Regulation of business of grain dealers, § 2-9-30 et seq.

**26-2-290. Definitions.**

As used in this article, the term:

(1) "Bread" means the foods commonly known and described as white bread and rolls, including, but not restricted to, Vienna bread, French bread, and Italian bread and rolls of the semibread dough type, such as soft rolls, hamburger, hot dog, parker house, etc., hard rolls, such as Vienna, Kaiser, etc., all made without fillings or icings, but shall not include sweet, yeast-raised rolls or sweet buns, cinnamon rolls or buns, butterfly rolls, etc.

(2) "Commissioner" means the Commissioner of Agriculture.

(3) "Degerminated corn meal" means all ground corn, corn meal, and bolted corn meal intended for human consumption which has undergone a refining process with a resultant loss of more than 10 percent of the germ.

(4) "Degerminated hominy grits" means all corn grits, grits, pearled grits, and endosperm portions of corn intended for human consumption which has undergone a refining process with a resultant loss of more than 10 percent of the germs.

(5) "Enrichment" as applied to flour, bread, meal, or grits means the addition thereto of vitamins and other ingredients of the nature required by this article; and the terms "enriched flour," "enriched bread," "enriched degerminated corn meal," and "enriched degerminated hominy grits" mean bread, flour, corn meal, or grits, as the case may be, which has been enriched to conform to the requirements of this article.

(6) "Flour" means flour of every kind and description made wholly or partly from wheat which conforms to the definition and standard of identity of flour, white flour, wheat flour, phosphated flour, self-rising flour, bromated flour, and plain flour as promulgated in the rules and regulations made by the Commissioner, but excludes whole-wheat flour made only from the whole-wheat berry with no part thereof removed, and also excludes special packaged flours not used for bread baking, such as cake, pancake, cracker, and pastry flours.

(7) "Person" means an individual, firm, corporation, partnership, association, joint stock company, trust, or any unincorporated organization. (Ga. L. 1945, p. 425, § 1.)

**26-2-291. Vitamins and ingredients in flour; specification changes; milling process.**

(a) It shall be unlawful for any person to manufacture, mix, compound, sell, or offer for sale, for human consumption in this state, any flour unless the following vitamins and other ingredients are contained in each pound of such flour:

- (1) Not less than 2.0 milligrams of vitamin B1 (thiamin);
- (2) Not less than 1.2 milligrams of riboflavin;
- (3) Not less than 16 milligrams of niacin (nicotinic acid) or niacin amide (nicotinic acid amide); and
- (4) Not less than 13 milligrams of iron.

(b) The enrichment of self-rising flour shall require, in addition to the ingredients required in subsection (a) of this Code section, not less than 500 milligrams of calcium.

(c) The Commissioner of Agriculture is authorized to change, or add to, in his discretion, the specifications for ingredients and the amounts thereof, in order that they shall conform to the federal definition of enriched flour when promulgated or as may from time to time be amended.

(d) If other vitamins and minerals are added to flour, they shall be added only in accordance with the regulations of the Commissioner.

(e) Iron shall be added only in forms which are assimilable and harmless and which do not impair the enriched flour.

(f) The enrichment of flour shall be accomplished by a milling process, addition of vitamins from a natural or synthetic source, addition of minerals, or by a combination of these methods, or by any method which is permitted by the Commissioner with respect to flour. (Ga. L. 1945, p. 425, § 2.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food,      **C.J.S.** — 36A C.J.S., Food, §§ 4, 5, 15.  
§§ 6, 19, 31.

**26-2-292. Vitamins and ingredients in bread; specification changes.**

(a) It shall be unlawful for any person to manufacture, bake, sell or offer for sale or to receive an interstate shipment for sale for human consumption in this state any bread unless the following vitamins and other ingredients are contained in each pound of such bread:

- (1) Not less than 1.1 milligrams of vitamin B1 (thiamin);
- (2) Not less than 0.7 milligrams of riboflavin;

(3) Not less than 10.0 milligrams of niacin (nicotinic acid) or niacin amide (nicotinic acid amide); and

(4) Not less than 10 milligrams of iron.

(b) The enrichment of bread may be accomplished through the use of enriched flour, special yeast, and other enriching ingredients, synthetic vitamins, harmless iron salts, or by any combination of harmless methods which will produce bread enriched so as to meet the requirements of subsection (a) of this Code section.

(c) Iron shall be added only in forms which are assimilable and harmless and which do not impair the enriched bread.

(d) The Commissioner of Agriculture is authorized to change, or add to, in his discretion, the specifications for ingredients and the amounts thereof in order that they shall conform to the federal definition of enriched bread when promulgated or as may from time to time be amended. (Ga. L. 1945, p. 425, § 3.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 6, 19, 31      **C.J.S.** — 36A C.J.S., Food, §§ 4, 5, 15.

#### **26-2-293. Vitamins and ingredients in degerminated corn meal and degerminated hominy grits; specification changes; milling process.**

(a) It shall be unlawful for any person to manufacture, mix, compound, sell, or offer for sale, for human consumption in this state, any degerminated corn meal or degerminated hominy grits unless the following vitamins and other ingredients are contained in each pound of such products:

(1) Not less than 2.0 milligrams of vitamin B1 (thiamin);

(2) Not less than 1.2 milligrams of riboflavin;

(3) Not less than 16 milligrams of niacin (nicotinic acid) or niacin amide (nicotinic acid amide); and

(4) Not less than 13 milligrams of iron.

(b) Iron shall be added only in forms which are assimilable and harmless and which do not harm the enriched corn meal or enriched grits.

(c) The substances referred to in subsection (a) of this Code section may be added in a harmless carrier which does not impair the enriched degerminated corn meal or enriched degerminated hominy grits, provided that such carrier is used only in the quantity necessary to effect an intimate and uniform admixture of such substances with the grits or corn meal.



(d) If other vitamins and minerals are added to degerminated corn meal or degerminated hominy grits, they shall be added only in accordance with such pertinent regulations as may be promulgated by the Commissioner of Agriculture.

(e) The Commissioner of Agriculture is authorized to change, or add to, in his discretion, the specifications for ingredients and the amounts thereof in order that they shall conform to the federal definition of enriched degerminated corn meal or enriched degerminated grits when promulgated or as from time to time may be amended.

(f) The enrichment of degerminated corn meal or degerminated hominy grits may be accomplished by a milling process, addition of vitamins from a natural or synthetic source, other enriching ingredients, harmless and assimilable inorganic salts, or by a combination of these methods which will produce enriched grits or enriched corn meal as herein defined. (Ga. L. 1945, p. 425, § 4.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food,      **C.J.S.** — 36A C.J.S., Food, §§ 4, 15.  
§§ 6, 19.

#### 26-2-294. Exemptions.

The terms of this article shall not apply to:

(1) Flour, corn meal, or grits sold to bakers or other commercial secondary processors if, prior to or simultaneously with delivery, the purchaser furnishes to the seller a certificate of intent in such form as the Commissioner shall by regulation prescribe, certifying that such flour, corn meal, or grits shall be used only in the production of flour, bread, corn meal, or grits enriched within the given establishment to meet the requirements of this article or shall be used in the manufacture of products other than those covered by this article. It shall be unlawful for any such purchaser so furnishing any such certificate of intent to use the unenriched flour, corn meal, or grits so purchased in any manner other than as stated in the certificate;

(2) Flour or bread which is made from the entire wheat berry with no parts of the wheat removed from the mixture. In cases of flour or bread containing mixtures of the whole wheat berry and white flour or mixture of various portions of the wheat berry, such products shall have a vitamin and mineral potency at least equal to enriched flour or enriched bread as described herein;

(3) Corn meal or grits which is made from the entire corn with no parts of the corn removed from the mixture, but shall not be construed to prevent the enrichment of such products if so desired by the

manufacturer. Any products so enriched must conform to standards and labeling provisions as provided in this article as modified by the Commissioner;

(4) Flour, corn meal, or grits for the wheat and corn producer whereby the miller is paid in wheat or corn or feed for the grinding service rendered, except in so far as such a mill may produce flour or degerminated corn meal or grits and sell or offer for sale such products, whereupon this article shall be applicable; nor shall this article apply to farmers in exchanging their corn for corn meal and wheat for flour, or having the same ground into flour, corn meal, or grits and disposing of the same for their own use or the use of the farm labor on their farms; or

(5) Mills doing custom grinding of wheat, whose capacity is 20 bushels of wheat per hour or less, and for custom mills that do not use artificial methods for bleaching flour. (Ga. L. 1945, p. 425, § 5.)

#### **26-2-295. Labeling requirements.**

It shall be unlawful to sell or offer for sale in this state any enriched flour, enriched bread, enriched degerminated corn meal, or enriched degerminated hominy grits which, if wrapped, fails to conform to the labeling requirements of the Commissioner of Agriculture. (Ga. L. 1945, p. 425, § 6.)

#### **RESEARCH REFERENCES**

**ALR.** — Constitutionality of statutes, requiring notice by label or otherwise of the fact that product is imported or as to place of production, 124 ALR 572.

#### **26-2-296. Duties of Commissioner of Agriculture.**

(a) The Commissioner of Agriculture is authorized as the administrative agency and is directed:

(1) To make, amend, and rescind such rules and regulations, in his discretion, as may be necessary to carry out this article, including, but without being limited to, such orders, rules, and regulations as he is hereinafter specifically authorized and directed to make.

(2) From time to time to adopt, in his discretion, such regulations changing or adding to the required ingredients for flour, bread, corn meal, or grits, specified in Code Sections 26-2-291 through 26-2-293, as shall be necessary to conform to the definitions and standards of identity of enriched flour, enriched bread, enriched degerminated corn meal, and enriched degerminated hominy grits, from time to time promulgated by the rules and regulations made by the Commissioner.

(b) All orders, rules, and regulations adopted by the Department of Agriculture pursuant to this article shall be published as provided for in

subsection (c) of this Code section, and, within the limits specified by this article, shall become effective upon such date as the Commissioner shall fix.

(c) Whenever under this article publication of any notice, order, rule, or regulation is required, such publication shall be made at least three times in ten days in newspapers of general circulation in three different sections of the state.

(d) The Commissioner is authorized to collect samples for analysis and to conduct examinations and investigations for the purposes of this article through any officers or employees under his supervision; and all such officers and employees shall have authority to enter to inspect any factory, mill, warehouse, shop, or establishment where flour, bread, corn meal, or grits is manufactured, processed, packed, sold, or held, or to inspect any vehicle and any flour, bread, corn meal, or grits therein, and all pertinent equipment, materials, containers, and labeling. (Ga. L. 1945, p. 425, § 7.)

RESEARCH REFERENCES

<b>Am. Jur. 2d.</b> — 35A Am. Jur. 2d, Food, §§ 6, 13, 31.	premises to building or construction inspector coming upon premises in discharge of duty, 28 ALR3d 891.
<b>C.J.S.</b> — 36A C.J.S., Food, §§ 4, 12, 13.	
<b>ALR.</b> — Liability of owner or occupant of	

26-2-297. Penalty.

Any person who violates this article or the orders, rules, or regulations promulgated by the Department of Agriculture under authority of this article shall, upon conviction thereof, be subject to a fine for each and every offense in a sum not exceeding \$100.00 or to imprisonment for not more than 30 days, or both. (Ga. L. 1945, p. 425, § 8.)

RESEARCH REFERENCES

<b>Am. Jur. 2d.</b> — 35A Am. Jur. 2d, Food, § 65 et seq.	violation of food law as affected by ignorance or mistake of fact, lack of criminal intent, or presence of good faith, 152 ALR 755.
<b>C.J.S.</b> — 36A C.J.S., Food, §§ 39-49.	
<b>ALR.</b> — Penal offense predicated upon	

ARTICLE 10

FISH AND OTHER SEAFOODS

<b>Cross references.</b> — Imposition of penalty authorized in lieu of other action, § 2-2-10. Regulation of commercial fishing and fish dealing generally, § 27-4-70 et seq.	gia, Georgia Department of Agriculture, Food Division Regulations, Chapter 40-7-4.
<b>Administrative rules and regulations.</b> — Additional Regulations Applicable to Crab Meat Plants, Official Compilation of the Rules and Regulations of the State of Georgia,	The Handling, Storage, Shucking, Packing, Shipping and/or Sale of Shellfish, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Agriculture, Food Division Regulations, Chapter 40-7-12.



**26-2-310. Definitions.**

As used in this article, the term:

(1) “Nonresident of the State of Georgia” means a person who has not maintained a continuous residence in this state for one year and not resided therein for six months next preceding the time when he makes application for a license.

(2) “Resident of the State of Georgia” means a person who has maintained a continuous residence in this state for one year and has resided therein for the six-month period preceding the time when he makes application for a license and a corporation organized under the laws of this state, of which a majority of the stockholders are residents of this state, or a foreign corporation which has become domesticated and qualified with the Secretary of State to do business in this state six months before it makes application for a license.

(3) “Seafood” means all fresh or frozen fish and all fresh or frozen shellfish, such as shrimp, oysters, clams, scallops, lobsters, crayfish, and other similar fresh or frozen edible products. However, nothing in this article shall apply to any canned or salted seafoods.

(4) “Wholesale fish dealer” means any person, firm, association of persons, or corporation who sells fish or seafood of any kind to a retail dealer, a wholesale dealer, hotels, restaurants, or other public eating places of any kind or nature whatsoever. (Ga. L. 1937-38, Ex. Sess., p. 332, § 4.)

**26-2-311. Administration by Commissioner of Agriculture.**

It shall be the duty of the Commissioner of Agriculture to administer this article. (Ga. L. 1937-38, Ex. Sess., p. 332, § 3.)

**26-2-312. Wholesale fish dealers’ licenses.**

(a) No person, firm, association of persons, or corporation shall be authorized or permitted to engage in the business of wholesale fish dealer in this state without first having paid to the Commissioner of Agriculture the annual license fees required in this Code section and having procured a license from the Commissioner authorizing such person to engage in the business of wholesale fish dealer. The annual license fee applicable to and required of wholesale fish dealers shall be as follows:

(1) The annual license fee for each resident wholesale fish dealer shall be \$50.00 for each place of business, fixed or movable;

(2) The annual license fee for each nonresident or alien wholesale fish dealer shall be \$50.00 for each place of business, fixed or movable,

provided that the annual license fee for each nonresident or alien wholesale fish dealer who is a resident of a state which charges Georgia resident wholesale fish dealers a fee in excess of \$50.00 shall be the same as the fee such state charges Georgia resident wholesale fish dealers for each place of business, fixed or movable. The Commissioner of Agriculture of the State of Georgia may enter into a reciprocal agreement with any other state to limit the fees such state charges a Georgia resident who operates as a wholesale fish dealer or its equivalent in such other state.

(b) Each truck or movable unit from which fish are sold at wholesale shall be deemed a place of business within the meaning of this article.

(c) A resident who produces the fish and other seafood he or she sells at retail or wholesale shall not be required to pay the license fee provided in paragraph (1) of subsection (a) of this Code section; nor shall any commercial fisherman licensed to catch fish or seafood by the state game and fish laws, rules, and regulations be required to pay the license fee provided for in this Code section. (Ga. L. 1937-38, Ex. Sess., p. 332, § 5; Ga. L. 1939, p. 316, § 1; Ga. L. 1945, p. 315, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 521, § 2; Ga. L. 1987, p. 908, § 1; Ga. L. 2002, p. 819, § 1.)

**The 2002 amendment**, effective July 1, 2002, in paragraph (a)(2), deleted “until July 1, 1988, and \$500.00 on and after July 1, 1988,” following “\$50.00” and substituted “who is a resident of a state which charges Georgia resident wholesale fish dealers a fee in excess of \$50.00 shall be the same as the fee such state charges Georgia resident wholesale fish dealers for each place of business, fixed or movable” for “shall be \$50.00 on and after July 1, 1998, for each

such dealer who is a resident of a state which has entered into a reciprocal agreement with the Commissioner of Agriculture of the State of Georgia to limit the fees which such state charges to Georgia residents who are wholesale fish dealers to not more than \$50.00 per annum” in the first sentence and added the last sentence, and inserted “or she” in subsection (c).

**Cross references.** — Commercial fishing and fish dealing generally, § 27-4-70 et seq.

## OPINIONS OF THE ATTORNEY GENERAL

**Commercial fishermen licensed by the Game and Fish Commission are not required to obtain wholesale fish dealer’s license to sell their catch.** 1954-56 Op. Att’y Gen. p. 554.

**Veteran’s certificate of exemption does not apply to the regulatory fee imposed on wholesale fish dealers.** 1945-47 Op. Att’y Gen. p. 484.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Fish, 49. 35A Am. Jur. 2d, Food, § 11. Game, and Wildlife Conservation, §§ 41, 47, .

**C.J.S.** — 36A C.J.S., Food, §§ 12, 36.

### 26-2-313. Applications for wholesale fish dealers’ licenses.

(a) Each and every person desiring to engage in the business of wholesale fish dealer in this state shall annually on or before January 1 in

every year make application to the Commissioner of Agriculture for a license in which such applicant shall state his name, his post office address, the nature of business in which he desires to engage, and the place at which he proposes to conduct his business. Such applicant shall also furnish to the Commissioner such other and additional information as the Commissioner may require. When such information is furnished, the Commissioner shall advise the applicant the amount of the license tax required of such applicant, and when said annual license tax is paid, the Commissioner shall issue to such applicant a license which shall particularly state the nature of the business which the applicant thereunder is authorized to conduct in this state and the place or places from which it may be conducted.

(b) The annual license fee shall be payable on or before January 1 of each and every year thereafter; provided, however, that whenever an application is submitted after July 1 of any year, the annual license fee for the remaining portion of such year shall be one-half of the annual license fee provided for in Code Section 26-2-312. (Ga. L. 1937-38, Ex. Sess., p. 332, § 6.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Commercial fishermen licensed by the Game and Fish Commission are not required to obtain wholesale fish dealer's license to sell their catch.** 1954-56 Op. Att'y Gen. p. 554.

**Veteran's certificate of exemption does not apply to the regulatory fee imposed on wholesale fish dealers.** 1945-47 Op. Att'y Gen. p. 484.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Fish, Game, and Wildlife Conservation, § 49. 35A Am. Jur. 2d, Food, § 11.

**C.J.S.** — 36A C.J.S., Food, §§ 12, 36.

**ALR.** — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

#### 26-2-314. License revocation.

The license of any wholesale fish dealer is subject to revocation by the Commissioner of Agriculture for violation of any law, rule, or regulation pertaining to the sale or distribution of seafoods or fish. (Ga. L. 1937-38, Ex. Sess., p. 332, § 14.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 11.

**C.J.S.** — 36A C.J.S., Food, § 12.



**26-2-315. Promulgation of rules and regulations regarding sanitation, distribution, and transportation of fish and seafoods.**

The Commissioner of Agriculture is authorized to regulate and prescribe rules and regulations with respect to the proper method of sanitation, distribution, and transportation of all fish and seafoods in this state and, as well, all fish and seafood transported from all other states. To this end the Commissioner may require that all fish and seafoods transported into and in and through this state shall be in refrigerated cars or by refrigerated trucks with insulated bodies or in containers disconnected from the body of the truck or by express or in boxes or other containers adequately iced. When fish and seafoods are transported from this state by truck, they shall be equipped with enclosed insulated bodies or containers disconnected from the body of the truck with proper refrigeration to carry the fish and seafood in good condition with 50 percent weight of ice to weight of fish or seafoods. (Ga. L. 1937-38, Ex. Sess., p. 332, § 7; Ga. L. 1992, p. 6, § 26.)

**Cross references.** — Shellfish sanitation program for interstate shipment of oysters and clams produced in state, § 27-4-197.

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 6.

**C.J.S.** — 36A C.J.S., Food, § 4.

**26-2-316. Suitable equipment and sanitation for wholesale fish dealers.**

The Commissioner of Agriculture is authorized to require each wholesale fish dealer having a fixed place of business to provide suitable equipment and sanitation to handle and care for fish and seafoods in a sanitary manner; and that each wholesale dealer having a fixed place of business shall have in his place of business a refrigerated or insulated box or cooler in which a degree of not higher than 40 degrees temperature shall be maintained and that his place of business shall have proper drainage and sewerage for the care of waste in the proper dressing or processing of fish and seafoods. (Ga. L. 1937-38, Ex. Sess., p. 332, § 8.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 16, 20.

**26-2-317. Traveling fish dealers; equipment.**

No person shall be permitted as a traveling fish dealer to conduct a business in this state unless he is so equipped with refrigerated and insulated containers and unless his vehicle is so equipped with proper

refrigeration or insulation as to provide adequate safeguards to prevent the sale of unsanitary products. (Ga. L. 1937-38, Ex. Sess., p. 332, § 9.)

#### RESEARCH REFERENCES

C.J.S. — 36A C.J.S., Food, § 28.

#### 26-2-318. Inspection of fish and seafoods.

It shall be the duty of the Commissioner of Agriculture to provide the proper and necessary inspection of all fish and seafoods sold or distributed in this state or transported into this state from other states. (Ga. L. 1937-38, Ex. Sess., p. 332, § 10.)

#### RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Food, § 13. C.J.S. — 36A C.J.S., Food, § 12.

#### 26-2-319. Allocation of license fees.

All revenues obtained from the annual license fees exacted or required to be paid by and under this article shall be allocated to the Department of Agriculture for the purpose of administering this article. (Ga. L. 1937-38, Ex. Sess., p. 332, § 11.)

#### 26-2-320. Penalty.

Any person who violates any provision of this article or any valid rule or regulation promulgated by the Commissioner of Agriculture pursuant to the terms of this article shall be guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment for not less than 30 days nor more than six months or by a fine of not less than \$50.00 nor more than \$500.00, or by both fine and imprisonment, in the discretion of the court. (Ga. L. 1937-38, Ex. Sess., p. 332, § 12.)

#### RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Food, § 65 et seq. violation of food law as affected by ignorance or mistake of fact, lack of criminal intent, or presence of good faith, 152 ALR 755.  
C.J.S. — 36A C.J.S., Food, §§ 39-49.  
ALR. — Penal offense predicated upon

## ARTICLE 11

## KOSHER FOODS

**26-2-330. Definitions.**

As used in this article, the term:

(1) "Food" means any meat, meat preparation, articles of food, or food products, either raw or prepared for human consumption, and whether to be consumed on the premises where prepared or sold or whether to be taken elsewhere for consumption.

(2) "Kosher food" means food prepared under and of products sanctioned by the orthodox Hebrew religious rules and requirements and includes foods prepared for the festival of Passover and termed as "Kosher for Passover."

(3) "Person" means any hotel, inn, delicatessen, grocery, butcher shop, restaurant keeper, or any individual, firm, or corporation operating a boarding house, eating house, lunchroom business, or catering business. (Code 1933, § 42-301b, enacted by Ga. L. 1980, p. 1767, § 1.)

**26-2-331. Sale or preparation of food falsely represented to be Kosher food; false representation in packaging, or preparation.**

(a) No person, with intent to defraud, shall sell, prepare, or expose for sale food which such person falsely represents to be Kosher food.

(b) No person shall falsely represent any food or the contents of any package or container to be Kosher or Kosher for Passover by having or permitting to be inscribed on it, in any language, the words "Kosher," "parve," "glatt," or "rabbinical supervision."

(c) Nothing contained in this Code section shall prohibit the use of the words "Kosher type" or "Kosher style food" in advertising. (Code 1933, § 42-302b, enacted by Ga. L. 1980, p. 1767, § 1.)

**Cross references.** — False advertising generally, § 10-1-420 et seq.

**RESEARCH REFERENCES**

**ALR.** — Validity and construction of regulations dealing with misrepresentation in the sale of Kosher food, 52 ALR3d 959.



**26-2-332. Use of signs or advertisements falsely representing food as Kosher food.**

No person, with intent to defraud, shall display any signs around his place of business or place any advertisements in any newspaper, magazine, periodical, or other publication which signs or advertisements falsely represent non-Kosher food sold, prepared, or offered for sale to be Kosher food. (Code 1933, § 42-303b, enacted by Ga. L. 1980, p. 1767, § 1.)

**Cross references.** — False advertising generally, § 10-1-420 et seq.

**RESEARCH REFERENCES**

**ALR.** — Validity and construction of regulations dealing with misrepresentation in the sale of Kosher food, 52 ALR3d 959.

**26-2-333. Regulation of preparation and serving of Kosher food.**

No person preparing or serving food shall prepare, sell, serve, or prepare for sale, either to be consumed on the premises or elsewhere, Kosher and non-Kosher food in the same place of business, unless such person:

- (1) Keeps separate kitchens where the food is prepared, unless the food is prepared and served under rabbinical supervision;
- (2) Keeps and uses separate and distinctly labeled or marked dishes and utensils in which the food is prepared and served; and
- (3) Indicates on all signs and similar display advertising in, on, or about such person's premises, in block letters at least four inches in height, "Kosher and non-Kosher food prepared or served here." (Code 1933, § 42-304b, enacted by Ga. L. 1980, p. 1767, § 1.)

**26-2-334. Prima-facie evidence of intent to defraud.**

Possession of non-Kosher food in any place of business advertising that the only food sold or offered for sale therein is Kosher food shall be prima-facie evidence of intent to defraud under Code Section 26-2-331 or 26-2-332. (Code 1933, § 42-305b, enacted by Ga. L. 1980, p. 1767, § 1.)

**26-2-335. Penalties for violations of article.**

Any person who violates any provision of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$25.00 nor more than \$500.00, or by imprisonment for not less than 30 days nor more than six months, or both. (Code 1933, § 42-306b, enacted by Ga. L. 1980, p. 1767, § 1.)

ARTICLE 12  
SOFT DRINKS

**Cross references.** — Imposition of penalty authorized in lieu of other action, § 2-2-10.

**26-2-350. Definitions.**

As used in this article, the term:

(1) "Bottled soft drink" means all nonalcoholic beverages, whether carbonated or not, such as soda water, carbonated water, orangeade, lemonade, fruit juice when any plain or carbonated water, flavoring, or syrup is added, or any and all preparations commonly referred to as "soft drinks" of whatever kind, which are closed and sealed in glass, paper, metal, or any other type of container or bottle, whether manufactured with or without the use of any syrup. This term shall not include fluid milk to which no flavoring has been added, or natural undiluted fruit or vegetable juice but shall include these drinks when mixed with any syrup, flavoring, water, or additive.

(2) "Commissioner" means the Commissioner of Agriculture.

(3) "Person" means any person, firm, corporation, association, or any combination thereof.

(4) "Soft drink syrup" means the compound mixture or the basic ingredients, whether dry or liquid, practically and commercially usable in making, mixing, or compounding soft drinks at soda fountains by the mixing thereof with carbonated or plain water, ice, fruit, milk, or any other product suitable to make a soft drink, or any such syrup used in the manufacture, bottling, or distribution of a bottled soft drink. (Ga. L. 1956, p. 611, § 1.)

**26-2-351. License for manufacture, bottling, and distribution; fee; separate license for each business or bottling or manufacturing plant.**

(a) In addition to complying with the food laws of this state, no person shall manufacture, bottle, or distribute for resale any bottled soft drink or soft drink syrup within this state unless he has a current license from the Commissioner. The license fee shall be \$10.00. Licenses shall expire on December 31 of each year and shall be renewable upon payment of a renewal fee of \$10.00 per annum or part thereof. The Commissioner shall determine the form of the license.

(b) Each place of business or bottling or manufacturing plant shall be required to obtain a separate license. (Ga. L. 1956, p. 611, § 2.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 11, 36.

**C.J.S.** — 36A C.J.S., Food, §§ 6, 12.

**ALR.** — Power to require license for sale of soft drinks, 6 ALR 1417.

**26-2-352. Sanitary standards and specifications for manufacture, bottling, and distribution of soft drinks or soft drink syrup; adoption; compliance with food laws.**

The Commissioner is charged with the enforcement of this article and is authorized to adopt sanitary standards and specifications for the manufacture, bottling, and distribution of a bottled soft drink or a soft drink syrup. No person shall manufacture, bottle, or distribute any bottled soft drink or soft drink syrup that has been produced, manufactured, bottled, or distributed under sanitary conditions and specifications that are less than those adopted by the Commissioner; provided, however, that such standards and specifications shall be no less than those adopted pursuant to the food laws of this state. (Ga. L. 1956, p. 611, § 3.)

## OPINIONS OF THE ATTORNEY GENERAL

**Bottled soft drinks subject to section on misbranding.** — The provisions of Ga. L. 1956, p. 195 (see O.C.G.A. § 26-2-28), apply

to bottled soft drinks. 1958-59 Op. Att'y Gen. p. 7.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 6, 36.

**C.J.S.** — 36A C.J.S., Food, §§ 4, 6.

**ALR.** — Validity of regulations as to ingredients of nonalcoholic soft drinks, 41 ALR 930.

Presumption or prima facie case of negligence based on presence of foreign substance in bottled or canned beverage, 52 ALR2d 117.

Liability of manufacturer or seller for injury caused by beverage sold, 77 ALR2d 215.

**26-2-353. Promulgation of rules and regulations; administrative personnel.**

The Commissioner is authorized to promulgate reasonable rules and regulations to effectuate this article. He shall employ the necessary personnel and fix their compensation to assist him in the administration of this article. (Ga. L. 1956, p. 611, § 4.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 6, 36.

**C.J.S.** — 36A C.J.S., Food, §§ 4, 6.

**ALR.** — Validity of regulations as to ingredients of nonalcoholic soft drinks, 41 ALR 930.



**26-2-354. Suspension or revocation of license; hearing.**

Any license issued pursuant to this article may be suspended or revoked by the Commissioner for the violation of this article or of any of the sanitary standards and specifications or rules and regulations issued pursuant to this article. The Commissioner shall notify the person whose license is to be suspended or revoked, by registered or certified mail or statutory overnight delivery, of his intent to suspend or revoke the license and shall afford such person a hearing before him, within ten days after receipt of the notice, to show cause why the license should not be suspended or revoked. (Ga. L. 1956, p. 611, § 5; Ga. L. 2000, p. 1589, § 3.)

**Editor's notes.** — Ga. L. 2000, p. 1589, Code section is applicable with respect to § 16, provides that the amendment to this notices delivered on or after July 1, 2000.

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 11, 36. **ALR.** — Validity of regulations as to ingredients of nonalcoholic soft drinks, 41 ALR 930.  
**C.J.S.** — 36A C.J.S., Food, §§ 6, 12.

**26-2-355. Sanitary inspection of building, area, structure, plant or vehicle used in manufacture, bottling, or distribution.**

The Commissioner or his authorized representatives shall have access, at any reasonable hour, to any building, area, structure, plant, or vehicle used in the manufacture, bottling, or distribution of a bottled soft drink or soft drink syrup to inspect sanitary conditions therein. (Ga. L. 1956, p. 611, § 6.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 13, 36. **C.J.S.** — 36A C.J.S., Food, §§ 6, 12.

**26-2-356. Applicability of article to dairy or milk processing or distributing plants otherwise licensed.**

Any dairy or milk processing or distributing plant licensed under other laws of this state shall not be required to obtain the license provided for in this article but shall be subject to all other provisions of this article. (Ga. L. 1956, p. 611, § 8.)

**RESEARCH REFERENCES**

**ALR.** — Soft drinks, ice cream, and the like, as food within Sunday Law, 21 ALR 754.

**26-2-357. Penalty.**

Any person who violates this article or any sanitary standard or specification or rule or regulation adopted pursuant to this article shall be guilty of a misdemeanor. (Ga. L. 1956, p. 611, § 7.)

**RESEARCH REFERENCES**

- Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, § 65 et seq.
- C.J.S.** — 36A C.J.S., Food, §§ 39-49.
- ALR.** — Penal offense predicated upon violation of food law as affected by ignorance or mistake of fact, lack of criminal intent, or presence of good faith, 152 ALR 755.
- Liability of manufacturer or seller for injury caused by beverage sold, 77 ALR2d 215.
- Liability for injury or death allegedly caused by spoilage or contamination of beverage, 87 ALR4th 804.
- Liability for injury or death allegedly caused by foreign substance in beverage, 90 ALR4th 12.

**ARTICLE 13****FOOD SERVICE ESTABLISHMENTS**

**Administrative rules and regulations.** — Food Service, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Public Health, Chapter 290-5-14.

**26-2-370. Definitions.**

As used in this article, the term:

(1) "Food service establishment" means establishments for the preparation and serving of meals, lunches, short orders, sandwiches, frozen desserts, or other edible products either for carry out or service within the establishment. The term includes restaurants; coffee shops; cafeterias; short order cafes; luncheonettes; taverns; lunchrooms; places which retail sandwiches or salads; soda fountains; institutions, both public and private; food carts; itinerant restaurants; industrial cafeterias; catering establishments; and similar facilities by whatever name called. Within a food service establishment, there may be a food sales component, not separately operated. This food sales component shall be considered as part of the food service establishment. This term shall not include a "food sales establishment," as defined in Code Section 26-2-21, except as stated in this definition. The food service component of any food sales establishment defined in Code Section 26-2-21 shall not be included in this definition. This term shall not include any outdoor recreation activity sponsored by the state, a county, a municipality, or any department or entity thereof, any outdoor public school function, or any outdoor private school function. This term also shall not mean establishments for the preparation and serving of meals, lunches, short orders, sandwiches,

frozen desserts, or other edible products if such preparation or serving is an authorized part of and occurs upon the site of a fair or festival which:

(A) Is sponsored by a political subdivision of this state or by an organization exempt from taxes under paragraph (1) of subsection (a) of Code Section 48-7-25 or under Section 501(d) or paragraphs (1) through (8) or paragraph (10) of Section 501(c) of the Internal Revenue Code, as that code is defined in Code Section 48-1-2;

(B) Lasts 120 hours or less; and

(C) When sponsored by such an organization, is authorized to be conducted pursuant to a permit issued by the municipality or county in which it is conducted.

(2) "Person" or "persons" means any individual, firm, partnership, corporation, trustee, or association, or combination thereof. (Ga. L. 1958, p. 371, § 1; Code 1933, § 88-1001, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 660, § 1; Ga. L. 1992, p. 1174, § 2; Ga. L. 1998, p. 1220, § 2; Ga. L. 2000, p. 1558, § 3; Ga. L. 2001, p. 1216, § 1.)

**The 2001 amendment**, effective July 1, 2001, added the seventh sentence in paragraph (1).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1985, "lunchrooms" was substituted for "lunch rooms" in the

second sentence of paragraph (1).

Pursuant to Code Section 28-9-5, in 1986, a semicolon was substituted for a comma following "lunchrooms" in the second sentence of paragraph (1).

## OPINIONS OF THE ATTORNEY GENERAL

**Food retailers with seating subject to inspection.** — Food sales establishments defined in O.C.G.A. § 26-2-21(a)(5) providing seating arrangements and other conveniences within its premises for customers to use in eating food items purchased in that store shall be subject to inspection as a "food service establishment," as defined in former

Code 1933, § 88-1001 (see O.C.G.A. § 26-2-370). 1978 Op. Att'y Gen. No. 78-65.

**Establishments selling food on a "walk-up" or "drive-up" basis** are food service establishments and as such are subject to regulation by the Department of Human Resources. 1991 Op. Att'y Gen. No. U91-9.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 40A Am. Jur. 2d, Hotels, Motels, and Restaurants, §§ 10, 11, 29.

**C.J.S.** — 36A C.J.S., Food, § 1. 43A C.J.S., Inns, Hotels, and Eating Places, § 4.

**ALR.** — What is "restaurant," "cafe," or "victualing house" within Sunday Law, 9 ALR 428.

Validity, construction, and application of statutes or ordinances prohibiting or regulating automatic vending machines, 111 ALR 755; 151 ALR 1195.



**26-2-371. Permits — Required; issued by county board of health or Department of Human Resources; validity; transferability; rules and regulations by municipalities.**

It shall be unlawful for any person to operate a food service establishment without having first obtained a valid food service establishment permit. Such permits shall be issued by the county board of health or its duly authorized representative, subject to supervision and direction by the Department of Human Resources; but, where the county board of health is not functioning, such permit shall be issued by the Department of Human Resources. Such permits shall be valid until suspended or revoked and shall not be transferable with respect to person or location. Nothing contained in this article shall prevent any municipality from adopting rules and regulations governing the licensing and operation of food service establishments. (Ga. L. 1958, p. 371, § 2; Code 1933, § 88-1002, enacted by Ga. L. 1964, p. 499, § 1.)

**JUDICIAL DECISIONS**

**Cited in** Aldridge v. Georgia Hospitality & Travel Ass'n, 251 Ga. 234, 304 S.E.2d 708 (1983).

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 40A Am. Jur. 2d, Hotels, Motels, and Restaurants, §§ 28 et seq., 40 et seq.

**C.J.S.** — 43A C.J.S., Inns, Hotels, and Eating Places, §§ 6, 8, 9.

**ALR.** — Validity of statute or ordinance relating to place of sale of food, 52 ALR 669.

**26-2-372. Permits — Issuance; suspension, revocation, or denial; notice and hearing.**

The Department of Human Resources, or county boards of health acting as agents of the department, shall have the power and authority to issue permits to operate food service establishments and to suspend or revoke such permits in accordance with the rules and regulations adopted and promulgated as provided for in this article. When, in the judgment of the department or the county board of health, acting as agent of the former, it is necessary and proper that such application for a permit be denied or that the permit previously granted be suspended or revoked, the applicant or holder thereof shall be afforded notice and hearing as provided in Article 1 of Chapter 5 of Title 31. In the event that such application is finally denied, suspended, or revoked, the applicant or holder of the permit shall be notified in writing. Such written notice shall specifically state any and all reasons why the application has been denied or the permit has been

suspended or revoked. (Ga. L. 1958, p. 371, § 3; Code 1933, § 88-1003, enacted by Ga. L. 1964, p. 499, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 40A Am. Jur. 2d, Hotels, Motels, and Restaurants, §§ 29, 40 et seq.

**C.J.S.** — 43A C.J.S., Inns, Hotels, and Eating Places, §§ 6, 8, 9.

**ALR.** — Validity of statute or ordinance relating to place of sale of food, 52 ALR 669.

#### **26-2-373. Promulgation of rules, regulations, and standards by Department of Human Resources and county boards of health; exemption for nonprofit schools and institutions which produce own milk.**

(a) For the purpose of protecting the public health, the Department of Human Resources shall have the power to adopt and promulgate such rules and regulations as it deems necessary and proper to carry out the purpose and intent of this article, including the establishment of reasonable standards of sanitation for food service establishments and such establishments which are also retail frozen dessert packagers and the examination and condemnation of unwholesome food therein. County boards of health are authorized to adopt and promulgate supplementary rules and regulations, including the establishment of reasonable standards of sanitation for food service establishments, consistent with those adopted and promulgated by the department. The department and the county boards of health may obtain technical and laboratory assistance from the Department of Agriculture.

(b) Nonprofit schools and institutions serving family-style meals shall not be included under the present law or any future law or any rule or regulation promulgated pursuant to such laws regulating the dispensing of milk in the kitchens and dining halls of such schools and institutions, provided such school or institution produces the milk on the school's or institution's farm which passes Department of Human Resources and local health department sanitary requirements. (Ga. L. 1958, p. 371, § 4; Code 1933, § 88-1004, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1992, p. 1279, § 2.)

**Cross references.** — Inspection by Commissioner of Agriculture of meat and meat products located within or held for sale or

consumption in food service establishments, § 26-2-106.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 3, 6. 40A Am. Jur. 2d, Hotels, Motels, and Restaurants, § 29.

**C.J.S.** — 36A C.J.S., Food, §§ 3, 4. 43A

C.J.S., Inns, Hotels, and Eating Places, § 6.

**ALR.** — Validity of statute or ordinance relating to place of sale of food, 52 ALR 669.

**26-2-373.1. Use of hair nets or hats by food preparers; penalty.**

(a) A person who, in the ordinary course of business in a food service establishment, prepares food which is to be consumed by humans shall wear, when preparing food, appropriate hair nets or hats or restraints to prevent contamination of such food.

(b) Notwithstanding the provisions of Code Section 26-2-377, any person who violates subsection (a) of this Code section shall be subject to a civil penalty as follows:

(1) For a first offense, neither fine nor punishment, but only a warning; and

(2) For a second or subsequent offense, a civil penalty not to exceed \$50.00.

(c) The county board of health or its representative which issues food service establishment permits under this article shall be authorized to impose the penalties authorized under subsection (b) of this Code section and shall provide the permit holder with notice of any violation of subsection (a) of this Code section.

(d) Hair nets shall not be required of food preparers when the preparer is a volunteer without payment for his or her services and the food is being prepared for a religious, educational, charitable, or nonprofit corporation. (Code 1981, § 26-2-373.1, enacted by Ga. L. 1997, p. 836, § 1; Ga. L. 1998, p. 128, § 26.)

**26-2-374. Contents and posting of notices relating to assistance to persons choking; relief from civil liability of persons rendering emergency aid.**

(a) The Department of Human Resources shall print and distribute notices to every food service establishment in this state explaining the proper procedures to be taken to assist or aid persons who are choking. The notices shall contain such information as is found appropriate or necessary by the department and shall be posted and maintained by the food service establishment in a conspicuous place or places on the premises as required by the department.

(b) Any person who renders emergency aid in good faith to persons who are choking, without any charge for his services, shall not be liable for any civil damages for any act or omission in rendering such emergency aid or as a result of any act or failure to act to provide or arrange for further treatment or care for such persons. (Code 1933, § 88-1004.1, enacted by Ga. L. 1979, p. 1272, § 1.)



**Cross references.** — Relief from civil liability of persons rendering emergency care generally, § 51-1-29.

**Law reviews.** — For comment, "Good Samaritan Laws — Legal Disarray: An Update," see 38 Mercer L. Rev. 1439 (1987).

### RESEARCH REFERENCES

**ALR.** — Construction and application of "Good Samaritan" statutes, 68 ALR4th 294.

## **26-2-375. Enforcement of article; inspection of food service and food sales establishments.**

(a) The Department of Human Resources and the county boards of health, acting as duly authorized agents of the department, are authorized to enforce this article and rules, regulations, and standards adopted and promulgated under this article in establishments that have the majority of square footage of building floor space, including indoor and outdoor dining areas, used for the operation of food service as defined in Code Section 26-2-370. Their duly authorized representatives are authorized to enter upon and inspect the premises of any food service establishment as provided in Article 2 of Chapter 5 of Title 31.

(b) Notwithstanding any other provisions of this article, food sales establishments as defined in Code Section 26-2-21 shall be inspected and regulated under Article 2 of this chapter and shall not be subject to inspection or enforcement under this article. (Ga. L. 1958, p. 371, § 7; Code 1933, § 88-1006, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 660, § 2; Ga. L. 2000, p. 1558, § 4.)

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 6, 11. 40A Am. Jur. 2d, Hotels, Motels, and Restaurants, §§ 29, 32. **C.J.S.** — 36A C.J.S., Food, § 4. 43A C.J.S., Inns, Hotels, and Eating Places, § 7.

## **26-2-376. Review of final order or determination by Department of Human Resources; appeal to superior court.**

Any person aggrieved by any final order or determination of any county board of health denying, suspending, or revoking any permit authorized in this article may secure review thereof by the Department of Human Resources by appeal in the manner prescribed in Article 1 of Chapter 5 of Title 31. Any person aggrieved by any final order or determination made by the Department of Human Resources; whether originally or on appeal, may secure review thereof by appeal to the superior court in the manner prescribed in Article 1 of Chapter 5 of Title 31. (Ga. L. 1958, p. 371, § 8; Code 1933, § 88-1007, enacted by Ga. L. 1964, p. 499, § 1.)

## RESEARCH REFERENCES

**C.J.S.** — 36A C.J.S., Food, § 4. 43A C.J.S., Inns, Hotels, and Eating Places, § 9.

**26-2-377. Penalty for violation of article.**

Any person who violates any provision of this article or any rule or regulation promulgated under this article by the Department of Human Resources or by any county board of health shall be guilty of a misdemeanor. (Ga. L. 1958, p. 371, § 11; Code 1933, § 88-1008, enacted by Ga. L. 1964, p. 499, § 1.)

## JUDICIAL DECISIONS

**Cited** in Cobb County Health Dep't v. Henson, 226 Ga. 801, 177 S.E.2d 710 (1970).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 40A Am. Jur. 2d, Hotels, Motels, and Restaurants, § 30.

**C.J.S.** — 43A C.J.S., Inns, Hotels, and Eating Places, § 11.

**26-2-378. Meat products that contain extenders to be displayed on menus or placards; applicability to minor amounts of extenders.**

(a) All food service establishments in this state which serve meat products that contain extenders, such as textured vegetable protein, textured soy flour, fortified textured vegetable protein, or other such products, shall display on their menus, or by placards visible to the public, information stating that the meat product contains extenders. Products which contain extenders shall not be advertised using names which designate all meat products. The menu or other advertisement must bear the same name that appears on the package when received from the processor and the ingredients statement as listed on the label.

(b) This Code section shall not be applicable to the serving of meat products which do not contain such an amount of extenders as to require additional labeling in accordance with other laws of the United States and laws of this state relating to meat products. (Code 1933, § 88-1009, enacted by Ga. L. 1974, p. 1116, § 1.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Food, §§ 21, 24, 33. 40A Am. Jur. 2d, Hotels, Motels, and Restaurants, § 30.

**C.J.S.** — 36A C.J.S., Food, § 23. 37 C.J.S., Fraud, § 67 et seq. 43A C.J.S., Inns, Hotels, and Eating Places, § 11.

## ARTICLE 14

## NONPROFIT FOOD SALES AND FOOD SERVICE

**26-2-390. Definitions.**

As used in this article, the term:

(1) "Nonprofit food sales and food service" means the temporary sale or service of food items by an organization at an event sponsored by a county, municipality, or organization or the temporary sale of food items by an organization if such sale is sponsored by a religious, charitable, or nonprofit corporation, including but not limited to churches, schools, clubs, lodges, or other such organizations.

(2) "Organization" means an organization exempt from taxes under paragraph (1) of subsection (a) of Code Section 48-7-25 or under Section 501(d) or paragraphs (1) through (8) or paragraph (10) of Section 501(c) of the Internal Revenue Code, as that code is defined in Code Section 48-1-2. (Code 1981, § 26-2-390, enacted by Ga. L. 1992, p. 1174, § 3; Ga. L. 1998, p. 1220, § 3.)

**26-2-391. Permits for nonprofit food sales and food service at events; duration of permit; issuance of subsequent permits.**

A county or municipality shall be authorized to issue permits for the operation of nonprofit food sales and food service at events sponsored by the county, municipality, or an organization. A permit shall be valid for a period of 120 hours or less and another permit shall not be issued to the organization holding such permit until five days have elapsed from the date of the expiration of the permit. No fees shall be charged to an organization for the issuance of any such permit by a county or municipality. (Code 1981, § 26-2-391, enacted by Ga. L. 1992, p. 1174, § 3; Ga. L. 1998, p. 1220, § 3.)

**26-2-392. Standards for food, labeling, and containers; protection from contamination; temperature; prohibited foods; utensils and equipment; ice; transport to other location; reuse at another event; handwashing facilities; unapproved facilities.**

(a) This Code section applies to food items prepared and offered for sale by organizations at events covered under this article. Food shall be in sound condition, free from spoilage, filth, or other contamination and shall be safe for human consumption. Food shall be obtained from sources that comply with all laws relating to food and food labeling. The use of food in hermetically sealed containers that was not prepared in a licensed food processing establishment is prohibited.

(b) At all times, including while being stored, prepared, displayed, served, or transported, food shall be protected from potential contamination.



tion, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, flooding, drainage, and overhead leakage or overhead drippage from condensation. The temperature of potentially hazardous food shall be either 45 degrees Fahrenheit or below or 140 degrees Fahrenheit or above at all times.

(c) The preparation of the following potentially hazardous foods is prohibited unless the organization has an established hazard control program:

- (1) Pastries filled with cream or synthetic cream;
- (2) Custards;
- (3) Products similar to the products listed in paragraphs (1) and (2) of this subsection; or
- (4) Salads containing meat, poultry, eggs, or fish.

(d) Frozen desserts shall only be produced using commercially pasteurized mixes or ingredients. Suitable utensils must be provided to eliminate hand contact with the cooked product. All utensils and equipment shall be cleaned periodically as necessary to prevent a buildup of food.

(e) Ice that is consumed or that contacts food shall be from an approved source and protected from contamination until used. Ice used for cooling stored food shall not be used for human consumption. Food shall be served in an individual-meal type of container and handed to the customer. Food items shall not be transported for sale at any other location or sold, held, or reused at another event.

(f) A convenient handwashing facility shall be available for employee handwashing. This facility shall consist of, at least, running water and individual paper towels.

(g) This Code section shall in no way be construed to allow the sale of food items which have been packaged, bottled, or canned in unapproved facilities.

(h) County boards of health are authorized to provide staff assistance to organizations at events covered under this article for the purpose of providing food safety instruction. (Code 1981, § 26-2-392, enacted by Ga. L. 1992, p. 1174, § 3; Ga. L. 1998, p. 1220, § 3.)

### **26-2-393. Enforcement of article.**

(a) The county or municipality issuing a permit for the operation of a nonprofit food sales and food service event shall be authorized to enforce the provisions of this article; provided, however, no adverse action against an organization may be taken by a county or municipality or any agent of a county or municipality, including a denial of a permit or revocation of a

permit, or citation for violation of this article, without the written approval of such action by the district health director.

(b) Any organization which is aggrieved or adversely affected by any final order or action of a county board of health or district health director may have review thereof by appeal to the commissioner of human resources or his or her designee. Appeals to the commissioner shall be heard after not more than eight hours. (Code 1981, § 26-2-393, enacted by Ga. L. 1992, p. 1174, § 3; Ga. L. 1998, p. 1220, § 3.)

ARTICLE 15

SALE OF MEAT, POULTRY, OR SEAFOOD FROM MOBILE VEHICLES

**Administrative rules and regulations.** — Additional Regulations Applicable to Retail Sale of Fresh and Frozen Seafood, Meat, Poultry and Other Foods from Mobile Vehicles, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Agriculture Food Division Regulations, Chapter 40-7-5.

26-2-410. Definitions.

As used in this article, the term:

(1) “Meat” means the carcass or any part of any carcass of any animal, including ratites, or any by-product thereof in any form.

(2) “Mobile vehicle” means any vehicle that is mobile and includes land vehicles, air vehicles, and water vehicles.

(3) “Poultry” means domestic fowl including, but not limited to, water fowl such as geese and ducks; birds which are bred for meat or egg production; game birds such as pheasants, partridge, quail, and grouse, as well as guinea fowl, pigeons, doves, and peafowl; and all other avian species. Such term shall not include ratites, which are considered to be livestock under the laws of this state.

(4) “Seafood” means all fresh or frozen fish and all fresh or frozen shellfish, such as shrimp, oysters, clams, scallops, lobsters, crayfish, and other similar fresh or frozen edible products, but such term shall not include canned or salted seafood. (Code 1981, § 26-2-410, enacted by Ga. L. 1998, p. 1377, § 1; Ga. L. 1999, p. 81, § 26.)

26-2-411. Licensing and inspection of mobile vehicles.

(a) Any person who sells, displays for sale, or offers for sale at retail any fresh or frozen meat, poultry, or seafood in, on, or from a mobile vehicle shall prominently display in such mobile vehicle a current and valid license issued by the Department of Agriculture. Such license shall be issued by the department following the satisfactory inspection of such mobile vehicle and the meat, poultry, or seafood offered for sale therefrom to determine

compliance with the laws of this state and the rules and regulations of the Commissioner and the payment of a license fee of \$50.00 per vehicle per year or any portion thereof. All licenses shall expire 12 months from the date of issue. Any license may be renewed for any subsequent year upon a satisfactory inspection of the mobile vehicle and its contents and the payment of the license fee.

(b) As a condition for retaining a license issued pursuant to this article, a mobile vehicle shall be inspected by the department a minimum of once every six months and a stamp, seal, or other marking showing the date of such inspection shall be affixed to the license by the department or its inspector. There shall be no charge or fee for such semi-annual inspection stamp, seal, or other marking. It shall be the duty of the owner or operator of each mobile vehicle licensed or required to be licensed under this article to make such mobile vehicle available to the department for inspection a minimum of once every six months at a reasonable time and place specified by the department. Said place shall be within 100 miles of the county in which the license is issued. (Code 1981, § 26-2-411, enacted by Ga. L. 1998, p. 1377, § 1.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Fingerprinting not required.** — An offense designated as one which requires fingerprinting under O.C.G.A. § 26-2-411 would not be fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

#### **26-2-412. Rules and regulations.**

The Commissioner is authorized to promulgate and adopt such rules and regulations as are necessary to effectuate the purpose of this article. (Code 1981, § 26-2-412, enacted by Ga. L. 1998, p. 1377, § 1.)

#### **26-2-413. Penalty for violations.**

Any person who violates this article shall be guilty of a misdemeanor. (Code 1981, § 26-2-413, enacted by Ga. L. 1998, p. 1377, § 1.)



## CHAPTER 3

STANDARDS, LABELING, AND ADULTERATION OF DRUGS  
AND COSMETICS

Sec.		Sec.	
26-3-1.	Short title.		termining whether label or advertisement is misleading.
26-3-2.	Definitions.	26-3-15.	Labeling or advertisement of a drug as an antiseptic.
26-3-3.	Prohibited acts.	26-3-16.	Promulgation of regulations; conformity with federal act.
26-3-4.	Detention of adulterated or misbranded drugs and cosmetics.	26-3-17.	Inspection of factories, warehouses, establishments, or vehicles; samples and specimens.
26-3-5.	Duty of prosecuting attorney upon report of violation; notice to possible defendant.	26-3-18.	Assistance in enforcement from Department of Agriculture or Department of Human Resources.
26-3-6.	Minor violations.	26-3-19.	Reports and publications by State Board of Pharmacy.
26-3-7.	When a drug or device deemed adulterated.	26-3-20.	Injunctions for violations of Code Section 26-3-3.
26-3-8.	When a drug or device deemed misbranded.	26-3-21.	Construction of chapter.
26-3-9.	Name and address of manufacturer on label of drugs requiring prescription.	26-3-22.	Other laws unaffected by chapter.
26-3-10.	Selling, delivering, or giving away of new drugs; exemptions.	26-3-23.	Penalty for impeding, obstructing, hindering, or preventing drug agent from performance of duty.
26-3-11.	When a cosmetic deemed adulterated.	26-3-24.	Penalty for violation of chapter.
26-3-12.	When a cosmetic deemed misbranded.		
26-3-13.	When a drug, device, or cosmetic advertisement deemed false.		
26-3-14.	Factors taken into account in de-		

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**Cross references.** — Permits for persons producing, manufacturing, etc., serums, vaccines, etc., for use in poultry and animals, Ch. 9, T. 4.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 17 et seq., 33, 181 et seq.

**C.J.S.** — 28 C.J.S. Drugs and Narcotics, § 117 et seq.

28A C.J.S. Drugs and Narcotics, § 224 et seq.

**ALR.** — Products liability: sufficiency of evidence to support product misuse defense

in actions concerning food, drugs, and other products intended for ingestion, 58 ALR4th 7.

Products liability: sufficiency of evidence to support product misuse defense in actions concerning cosmetics and other personal care products, 58 ALR4th 40.

Products liability: mascara and other eye cosmetics, 63 ALR4th 105.

**26-3-1. Short title.**

This chapter may be cited as the “Georgia Drug and Cosmetic Act.” (Ga. L. 1961, p. 529, § 1; Code 1933, § 79A-1001, enacted by Ga. L. 1967, p. 296, § 1.)

**JUDICIAL DECISIONS**

**This title is not unconstitutional** as violating the provisions of Ga. Const. 1945, Art. III, Sec. VII, Para. VIII (see Ga. Const. 1976, Art. III, Sec. VII, Para. VIII) which prohibits the inclusion of more than one subject mat-

ter in any act of the General Assembly. *Crumley v. Head*, 225 Ga. 246, 167 S.E.2d 651 (1969) (decided under former Ga. Const. 1945, Art. III, Sec. VII, Para. VIII).

**26-3-2. Definitions.**

As used in this chapter, the term:

(1) “Advertisement” means all representations disseminated in any manner or by any means other than by labeling for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of drugs, devices, or cosmetics.

(2) “Board” means the State Board of Pharmacy.

(3) “Contaminated with filth” applies to any drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from all foreign or injurious contamination.

(4) “Cosmetic” means:

(A) Articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and

(B) Articles intended for use as a component of any such articles, except that such term shall not include soap.

(5) “Device” (except when used in paragraph (10) of Code Section 26-3-3, paragraph (3) of Code Section 26-3-8, paragraph (3) of Code Section 26-3-12, and Code Section 26-3-14) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(A) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man; or

(B) To affect the structure or any function of the body of man.

(6) “Drug” means:

(A) Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them;

(B) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(C) Articles other than food intended to affect the structure or any function of the body of man;

(D) Articles intended for use as a component of any article specified in subparagraph (A), (B), or (C), but does not include devices or their components, parts, or accessories.

(7) "Federal act" means the Federal Food, Drug, and Cosmetic Act (Title 21 U.S.C. Section 301, et seq.; 52 Stat. 1040, et seq.).

(8) "Immediate container" does not include package liners.

(9) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on or is easily legible through any existing outside container or wrapper.

(10) "Labeling" means all labels and other written, printed, or graphic matters:

(A) Upon an article or any of its containers or wrappers; or

(B) Accompanying such article.

(11) "New drug" means:

(A) Any drug the composition of which is such that such drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or

(B) Any drug the composition of which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not been used to a material extent or for a material time under such conditions other than in such investigations.

(12) "Official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

(13) "Person" means an individual, partnership, corporation, company, or association. (Ga. L. 1961, p. 529, § 2; Code 1933, § 79A-1002,



enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1982, p. 3, § 26; Ga. L. 2003, p. 140, § 26.)

**The 2003 amendment**, effective May 14, 2003, part of an Act to revise, modernize, and correct the Code, revised punctuation

in paragraph (7) and subparagraph (10)(A).

**Cross references.** — State Board of Pharmacy generally, § 26-4-30 et seq.

## JUDICIAL DECISIONS

**Editor's notes.** — Some of the cases cited below were decided under former Code 1895, § 2103.

**Adulterated drugs can include those in official compendia.** — Former Code 1895, § 2103 (see O.C.G.A. § 26-3-2) referred only to drugs and preparations recognized by standard compendia, such as the United States Pharmacopoeia or the Homeopathic Pharmacopoeia of the United States, but also to drugs not part of the official compendia. *Lewis v. Brannen*, 6 Ga. App. 419, 65 S.E.

189 (1909) (decided under former Code 1895, § 2103).

**Vitamins, minerals, and food supplements** may be treated as drugs under the Georgia Chiropractic Practices Act (O.C.G.A. § 43-9-1 et seq.), even though such substances are treated as foods under the Georgia Drug and Cosmetic Act (O.C.G.A. § 26-3-1 et seq.). *Foster v. Georgia Bd. of Chiropractic Exmrs.*, 257 Ga. 409, 359 S.E.2d 877 (1987).

## OPINIONS OF THE ATTORNEY GENERAL

**Licensing requirements of former Code 1933, § 79A-102** (see O.C.G.A. Title 26) do not apply to state and local governments. 1974 Op. Att'y Gen. No. 74-17.

**Because O.C.G.A. Title 26, Chapter 3 applies only to "persons".** — The licensing requirements of former Code 1933, § 79A-102 (see O.C.G.A. Title 26) are directed toward "persons," a term defined by

former Code 1933, § 79A-102 (see O.C.G.A. § 26-3-2) to include "an individual, a partnership, a corporation or an association"; if there is no other specific reference to the state or its political subdivision evidencing an intent to include; that section excludes the state and its political subdivisions from the licensing requirements of that title. 1974 Op. Att'y Gen. No. 74-17.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 3 Am. Jur. 2d, Advertising, §§ 2, 5. 25 Am. Jur. 2d, Drugs and Controlled Substances, § 1. 32 Am. Jur. 2d, False Pretenses, § 78.

**C.J.S.** — 3A C.J.S., Antiseptic. 20 C.J.S., Cosmetic. 28 C.J.S., Drugs and Narcotics, §§ 2, 9, 10. 37 C.J.S., Fraud, § 67 et seq.

**ALR.** — Provisions of statutes against misbranding or false labeling of food, drug, or cosmetic products, as applicable to literature other than that attached to product itself, 143 ALR 1453.

Promotional efforts directed toward prescribing physician as affecting prescription drug manufacturer's liability for product-caused injury, 94 ALR3d 1080.

What is "device" within meaning of § 201(h) of Federal Food, Drug, and Cosmetic Act (21 USCS § 321(h)), 129 ALR Fed. 343.

What is "new drug" within meaning of § 201(p) of Federal Food, Drug, and Cosmetic Act (21 USCS § 321(p)), 133 ALR Fed. 229.

**26-3-3. Prohibited acts.**

The following acts and the causing thereof within this state are prohibited:

- (1) The manufacture, sale or delivery, or holding or offering for sale of any drug, device, or cosmetic that is adulterated or misbranded;
- (1.1) The holding of any drug, device, or cosmetic that is adulterated or misbranded;
- (2) The adulteration or misbranding of any drug, device, or cosmetic;
- (3) The receipt in commerce of any drug, device, or cosmetic that is adulterated or misbranded and the delivery or proffered delivery thereof for pay or otherwise;
- (4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of Code Section 26-3-10;
- (5) The dissemination of any false advertisement;
- (6) The refusal to permit entry or inspection or to permit the taking of a sample as authorized by Code Section 26-3-17;
- (7) The giving of a guarantee or undertaking which is false except by a person who relied on a guarantee or undertaking to the same effect signed by and containing the name and address of the person residing in this state from whom he received the drug, device, or cosmetic in good faith;
- (8) The removal or disposal of a detained or embargoed article in violation of Code Section 26-3-4;
- (9) The alteration, mutilation, destruction, obliteration, removal of the whole or any part of the labeling of, or the doing of any other act with respect to a drug, device, or cosmetic if such act is done while such article is held for sale and results in such article being misbranded;
- (10) Forging, counterfeiting, simulating, falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under this chapter; and
- (11) The use on the labeling of any drug or in any advertisement relating to such drug of any representation or suggestion that any application with respect to such drug is effective under or complies with Code Section 26-3-10. (Ga. L. 1961, p. 529, § 3; Code 1933, § 79A-1003, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1996, p. 1609, § 1.)

**Law reviews.** — For article, "Products Liability Law in Georgia: Is Change Coming?," see 10 Ga. St. B.J. 353 (1974).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 17, 19, 69.

**C.J.S.** — 28 C.J.S., Drugs and Narcotics, §§ 9, 10, 29.

**ALR.** — Validity, construction, and application of statutes or ordinances directed against false or fraudulent statements in advertisements, 89 ALR 1004.

Provisions of statutes against misbranding or false labeling of food, drug, or cosmetic products, as applicable to literature other than that attached to product itself, 143 ALR 1453.

Liability of manufacturer or seller for injury caused by drug or medicine sold, 79 ALR2d 301.

Liability of manufacturer or seller of hair

preparations, cosmetics, soaps and other personal cleansers, and the like, for injury caused by the product, 79 ALR2d 431; 46 ALR4th 1197; 54 ALR4th 574; 63 ALR4th 105.

Validity of statute or ordinance forbidding pharmacist to advertise prices of drugs or medicines, 44 ALR3d 1301.

Promotional efforts directed toward prescribing physician as affecting prescription drug manufacturer's liability for product-caused injury, 94 ALR3d 1080.

Common-law right of action for damage sustained by plaintiff in consequence of sale or gift of intoxicating liquor or habit-forming drug to another, 97 ALR3d 528; 62 ALR4th 16.

#### 26-3-4. Detention of adulterated or misbranded drugs and cosmetics.

(a) Whenever a duly authorized agent of the State Board of Pharmacy finds or has probable cause to believe that any drug or cosmetic is adulterated or so misbranded as to be dangerous or fraudulent within the meaning of this chapter, he shall affix to such article a tag or other appropriate marking giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by the agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without permission.

(b) When an article detained or embargoed under subsection (a) of this Code section has been found by such agent to be adulterated or misbranded, he shall petition the judge of the superior court of the appropriate county for an action for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tags or other markings.

(c) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof under the supervision of the State Board of Pharmacy; and all court costs and fees, storage, and other proper expenses shall be taxed against the claimant of such articles or his agent, provided that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the



decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by proper order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the State Board of Pharmacy. The expense of such supervision shall be paid by the claimant. Such article shall be returned to the claimant of the article on representation to the court by the State Board of Pharmacy that the article is no longer in violation of this chapter and that the expense of such supervision has been paid.

(d) Whenever the State Board of Pharmacy or any of its authorized agents shall find in any room, building, vehicle for transportation, or other structure any drug, device, or cosmetic which is unsound or contains any filthy, decomposed, or putrid substance or that may be poisonous or deleterious to health or otherwise unsafe, the same being declared to be a nuisance, the State Board of Pharmacy or its authorized agents shall immediately condemn or destroy the same. (Ga. L. 1961, p. 529, § 6; Code 1933, § 79A-1005, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1984, p. 22, § 26.)

#### RESEARCH REFERENCES

**C.J.S.** — 28 C.J.S., Drugs and Narcotics, §§ 88, 89.

**ALR.** — Right to jury trial in case of seizure of property alleged to be illegally used, 17 ALR 568; 50 ALR 97.

Provisions of statutes against misbranding or false labeling of food, drug, or cosmetic

products, as applicable to literature other than that attached to product itself, 143 ALR 1453.

Promotional efforts directed toward prescribing physician as affecting prescription drug manufacturer's liability for product-caused injury, 94 ALR3d 1080.

#### **26-3-5. Duty of prosecuting attorney upon report of violation; notice to possible defendant.**

It shall be the duty of each prosecuting attorney to whom the State Board of Pharmacy reports any violation of this chapter to cause appropriate criminal proceedings to be instituted in the appropriate court without delay and to prosecute same in the manner provided by law. Before any violation of this chapter is reported to any prosecuting attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the State Board of Pharmacy or its designated agent, either orally or in writing, in person, or by attorney with regard to such contemplated proceedings. (Ga. L. 1961, p. 529, § 7; Code 1933, § 79A-1006, enacted by Ga. L. 1967, p. 296, § 1.)

**OPINIONS OF THE ATTORNEY GENERAL**

**Board can still notify federal authorities when violator outside jurisdiction.** — When the alleged violator is outside the jurisdiction of the State Board of Pharmacy, the recourse of the board lies in the notification

of the federal authorities charged with the enforcement of federal laws in the area of nonmailable items and the regulation of drugs, medicines and poisons. 1969 Op. Att'y Gen. No. 69-121.

**RESEARCH REFERENCES**

**C.J.S.** — 28 C.J.S. Drugs and Narcotics, § 101 et seq.

**26-3-6. Minor violations.**

Nothing in this chapter shall be construed as requiring the State Board of Pharmacy to report minor violations of this chapter for the institution of proceedings under this chapter, whenever the State Board of Pharmacy believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. (Ga. L. 1961, p. 529, § 8; Code 1933, § 79A-1007, enacted by Ga. L. 1967, p. 296, § 1.)

**26-3-7. When a drug or device deemed adulterated.**

A drug or device shall be deemed to be adulterated:

(1)(A) If it consists in whole or in part of any filthy, putrid, or decomposed substance;

(B) If it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have been rendered injurious to health;

(C) If it is a drug and its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or

(D) If it is a drug and it bears or contains for purposes of coloring only a coal-tar color other than one from a batch certified under the authority of the federal act;

(2) If it purports to be or is represented as a drug the name of which is recognized in an official compendium and its strength differs from or its quality or purity falls below the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or, in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength,

quality, or purity therefor set forth in such compendium if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia;

(3) If it is not subject to the provisions of paragraph (2) of this Code section and its strength differs from or its purity or quality falls below that which it purports or is represented to possess; or

(4) If it is a drug and any substance has been:

(A) Mixed or packed therewith so as to reduce its quality or strength; or

(B) Substituted wholly or in part therefor. (Ga. L. 1961, p. 529, § 9; Code 1933, § 79A-1008, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1984, p. 22, § 26.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1985, a comma was deleted following “differs from” in the first sentence of paragraph (2).

JUDICIAL DECISIONS

**Editor’s notes.** — In light of the similarity of the provisions, decisions under former Code 1895, § 2103 are included in the annotations for this section.

**Adulterated drugs can include those not in official compendia.** — Former Code 1895, § 2103 (see O.C.G.A. § 26-3-7) referred not only to drugs and preparations recognized by the standard United States or Homeopathic Pharmacopoeia but also to drugs not part of the official compendia. *Lewis v. Brannen*, 6 Ga. App. 419, 65 S.E. 189 (1909) (decided under former Code 1895, § 2103).

RESEARCH REFERENCES

**Am. Jur. 2d.** — 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 17, 19, 69. **C.J.S.** — 28 C.J.S., Drugs and Narcotics, § 8 et seq.

26-3-8. When a drug or device deemed misbranded.

(a) A drug or device shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular;

(2) If in package form unless it bears a label containing:

(A) The name and place of business of the manufacturer, packer, or distributor; and



(B) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, provided that reasonable variations shall be permitted and exemptions as to small packages shall be established by regulations prescribed by the State Board of Pharmacy;

(3) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with conspicuousness as compared with other words, statements, designs, or devices in the labeling and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alphaeucaine, barbituric acid, betaeucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, sulfonmethane, or any chemical derivative of such substance which has been found after investigation by the State Board of Pharmacy to be and by regulations under this chapter designated as habit forming, or any synthetic narcotic or drug unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning — May be habit forming";

(5) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears:

(A) The common or usual name of the drug if there is such; and

(B) In case it is fabricated from two or more ingredients, the common or usual name of each active ingredient including the kind and quantity or proportion of any alcohol and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substance contained therein, provided that to the extent that compliance with the requirements of this subparagraph is impracticable, exemptions shall be established by regulations promulgated by the State Board of Pharmacy;

(6)(A) Unless its labeling bears:

(i) Adequate directions for use; and

(ii) Adequate warnings against use by children or in those pathological conditions where its use may be dangerous to health or against unsafe dosage or methods or duration of administration or application in such manner and form as are necessary for the protection of users.

(B) Where any requirement of division (i) of subparagraph (A) of this paragraph as applied to any drug or device is not necessary for the protection of the public health, the State Board of Pharmacy shall promulgate regulations exempting such drug or device from such requirements;

(7) If it is purported to be a drug the name of which is recognized in an official compendium unless it is packaged and labeled as prescribed therein, provided that the method of packing may be modified with consent of the State Board of Pharmacy. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia;

(8) If it has been found by the State Board of Pharmacy to be a drug liable to deterioration unless it is packaged in such form and manner and its label bears a statement or such precautions as the State Board of Pharmacy shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the State Board of Pharmacy shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements;

(9)(A) If it is a drug and its container is so made, formed, or filled as to be misleading;

(B) If it is an imitation of another drug; or

(C) If it is offered for sale under the name of another drug;

(10) If it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

(11) If it is a drug intended for use by man which:

(A) Is a habit-forming drug to which paragraph (4) of this subsection applies;

(B) Because of its toxicity or other potentiality for harmful effect, the method of use, or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or

(C) Is limited by an effective application under Section 505 of the federal act to use under the professional supervision of a practitioner licensed by law to administer such drug unless it is dispensed only:

(i) Upon a written prescription of a practitioner licensed by law to administer such drug;

(ii) Upon an oral prescription of such practitioner which is reduced promptly to writing and filed by the pharmacist; or

(iii) By refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist.

(b) Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of this Code section except paragraphs (1) and (9) of subsection (a) of this Code section if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber, and, if stated in the prescription, the name of the patient and the directions for use and cautionary statements, if any, contained in such prescription. This exemption shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail or to a drug dispensed in violation of paragraph (11) of subsection (a) of this Code section. (Ga. L. 1906, p. 83, § 5; Civil Code 1910, § 2104; Ga. L. 1913, p. 44, §§ 1, 2; Code 1933, § 42-110; Ga. L. 1947, p. 1463, § 2; Ga. L. 1961, p. 529, § 10; Code 1933, § 79A-1009, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1984, p. 22, § 26; Ga. L. 1985, p. 149, § 26.)

**Cross references.** — Deceptive trade practices generally, § 10-1-370 et seq. Controlled substances and dangerous drugs, Ch. 13, T. 16.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1985, in subparagraph (a)(2)(B) “, provided that” was substituted for “; provided, that” and a semicolon was substituted for a period following “Pharmacy”; in paragraph (a)(4) a comma was deleted following “Pharmacy”; and in subparagraph (a)(5)(B) a comma was deleted following “such substance”.

**U.S. Code.** — Section 505 of the Federal Food, Drug, and Cosmetic Act, referred to in subparagraph (a)(11)(C) of this section, is codified at 21 U.S.C. § 355.

**Law reviews.** — For comment on *Givens v. Lederle*, 556 F.2d 1341 (5th Cir. 1977) which extends a manufacturer's duty to warn physicians about affects the drugs may have on third person bystanders, see 29 Mercer L. Rev. 643 (1978).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 17, 19, 69.

**C.J.S.** — 28 C.J.S., Drugs and Narcotics, § 8.

**ALR.** — Constitutionality of requirement of disclosure by label of materials or ingredients of articles sold or offered for sale, 57 ALR 686.



Mistake as to chemical or product furnished or misdescription thereof by label or otherwise as basis of liability for personal injury or death resulting from combination with other chemical, 123 ALR 939.

Provisions of statutes against misbranding or false labeling of food, drug, or cosmetic products, as applicable to literature other than that attached to product itself, 143 ALR 1453.

Liability of manufacturer or seller for injury or death allegedly caused by failure to warn regarding danger in use of vaccine or prescription drug, 94 ALR3d 748.

Promotional efforts directed toward prescribing physician as affecting prescription drug manufacturer's liability for product-caused injury, 94 ALR3d 1080.

### **26-3-9. Name and address of manufacturer on label of drugs requiring prescription.**

(a) Any drug product designed for human usage which is branded as follows:

“Caution: Federal law prohibits dispensing without prescription”

shall bear on the label the name and address of the manufacturer.

(b) For the purposes of this Code section, the term “manufacturer” includes any of the following parties:

(1) The person who is responsible for the production of the drug and maintains control over the processing of same;

(2) The person to whose specifications the drug is manufactured and who reviews adherence to such specifications through a drug testing program;

(3) The person who manufactures the drug product and then packs and ships the said drug products on behalf of the person designated on the label as being responsible for the drug product; or

(4) The person who manufactures the drug product and which product is distributed by the person designated on the label as being responsible for the drug without testing to determine adherence to specifications for manufacture.

(c) Where the drug product is manufactured by an affiliated or subsidiary company of the distributor, the name and address of the distributor only need appear. (Code 1933, § 79A-1009.1, enacted by Ga. L. 1975, p. 691, § 1; Ga. L. 1982, p. 3, § 26.)

### **RESEARCH REFERENCES**

**Am. Jur. 2d.** — 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 17, 19, 69.

**C.J.S.** — 28 C.J.S., Drugs and Narcotics, § 8.

**26-3-10. Selling, delivering, or giving away of new drugs; exemptions.**

(a) No person shall sell, deliver, offer for sale, hold for sale, or give away any new drug unless:

(1) An application with respect thereto has become effective under Section 505 of the federal act; or

(2) When not subject to the federal act unless such drug has been tested and has not been found to be unsafe for use under the conditions prescribed, recommended, or suggested in the labeling thereof and prior to selling or offering such drug for sale, there has been filed with the State Board of Pharmacy an application setting forth:

(A) Full reports of investigations which have been made to show whether or not such drug is safe for use;

(B) A full list of the articles used as components of such drug;

(C) A full statement of the composition of such drug;

(D) A full description of the methods used in and the facilities and controls used for the manufacture, processing, and packing of such drug;

(E) Such samples of such drug and of the articles used as components thereof as the State Board of Pharmacy may require; and

(F) Specimens of the labeling proposed to be used for such drug.

(b) An application provided for in paragraph (2) of subsection (a) of this Code section shall become effective 60 days after the filing thereof, except that if the State Board of Pharmacy finds after due notice to the applicant and after giving him an opportunity for a hearing that the drug is not safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof, he shall prior to the effective date of the application issue an order refusing to permit the application to become effective.

(c) This Code section shall not apply:

(1) To a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety in drugs, provided the drug is plainly labeled "For investigational use only"; or

(2) To a drug sold in the state at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act; or

(3) To any drug manufactured, labeled, and sold for veterinary purposes.

(d) An order refusing to permit an application under this Code section to become effective may be revoked by the State Board of Pharmacy. (Ga. L. 1961, p. 529, § 11; Code 1933, § 79A-1010, enacted by Ga. L. 1967, p. 296, § 1.)

**U.S. Code.** — Section 505 of the Federal Food, Drug, and Cosmetic Act, referred to in paragraph (a)(1) of this section, is codified at 21 U.S.C. § 355.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 17, 19, 69.

**C.J.S.** — 28 C.J.S., Drugs and Narcotics, § 8, 21.

**ALR.** — What is “new drug” within meaning of § 201(p) of Federal Food, Drug, and Cosmetic Act (21 USCS § 321(p)), 133 ALR Fed. 229.

#### 26-3-11. When a cosmetic deemed adulterated.

(a) A cosmetic shall be deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual, provided that this paragraph shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: “Caution — This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness,” and the labeling of which bears adequate directions for such preliminary testing;

(2) If it consists in whole or in part of any filthy, putrid, or decomposed substance;

(3) If it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health;

(4) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(5) If it is not a hair dye and it bears or contains a coal-tar color other than one from a batch which has been certified under authority of the federal act.

(b) For the purpose of paragraphs (1) and (5) of subsection (a) of this Code section, the term “hair dye” shall not include eyelash dyes or eyebrow dyes. (Ga. L. 1961, p. 529, § 12; Code 1933, § 79A-1011, enacted by Ga. L. 1967, p. 296, § 1.)



## RESEARCH REFERENCES

**C.J.S.** — 2 C.J.S., Adulteration, §§ 3, 4.

**ALR.** — Liability of manufacturer or seller for injury or death allegedly caused by failure to warn regarding danger in use of vaccine or prescription drug, 94 ALR3d 748.

**26-3-12. When a cosmetic deemed misbranded.**

A cosmetic shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular;

(2) If in package form unless it bears a label containing:

(A) The name and place of business of the manufacturer, packer, or distributor; and

(B) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, provided that reasonable variations shall be permitted and exemptions as to small packages shall be established by regulations prescribed by the State Board of Pharmacy;

(3) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness as compared with other words, statements, designs, or devices in the labeling and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

(4) If its container is so made, formed, or filled as to be misleading. (Ga. L. 1961, p. 529, § 13; Code 1933, § 79A-1012, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1984, p. 22, § 26.)

**Cross references.** — Deceptive trade practices generally, § 10-1-370 et seq.

## RESEARCH REFERENCES

**ALR.** — Provisions of statutes against misbranding or false labeling of food, drug, or cosmetic products, as applicable to literature other than that attached to product itself, 143 ALR 1453.

**26-3-13. When a drug, device, or cosmetic advertisement deemed false.**

(a) An advertisement of a drug, device, or cosmetic shall be deemed to be completely false if it is false or misleading in any particular.

(b) For the purpose of this chapter the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poisoning, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and

vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis or infantile paralysis, prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or venereal disease shall also be deemed to be false, except that no advertisement not in violation of subsection (a) of this Code section shall be deemed to be false under this subsection if it is disseminated only to members of the medical, dental, or veterinary professions, appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested directly or indirectly in the sale of such drugs or devices, provided that whenever the State Board of Pharmacy determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named in this subsection, the board shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease subject to such conditions and restrictions as the board may deem necessary in the interest of public health, provided that this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious. (Ga. L. 1961, p. 529, § 14; Code 1933, § 79A-1013, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1982, p. 3, § 26.)

**Cross references.** — False advertising generally, § 10-1-420 et seq.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 3 Am. Jur. 2d, Advertising, §§ 2, 5. 32 Am. Jur. 2d, False Pretenses, § 78.

**C.J.S.** — 28 C.J.S., Drugs and Narcotics, §§ 8, 9. 37 C.J.S., Fraud, § 67 et seq.

**ALR.** — Validity, construction, and application of statutes or ordinances directed

against false or fraudulent statements in advertisements, 89 ALR 1004.

Promotional efforts directed toward prescribing physician as affecting prescription drug manufacturer's liability for product-caused injury, 94 ALR3d 1080.

#### **26-3-14. Factors taken into account in determining whether label or advertisement is misleading.**

If an article is alleged to be misbranded because the labeling is misleading or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading there shall be taken into account, among other things not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual. (Ga. L.

1961, p. 529, § 2; Code 1933, § 79A-1002, enacted by Ga. L. 1967, p. 296, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 3 Am. Jur. 2d, Advertising, §§ 2, 5. 25 Am. Jur. 2d, Drugs and Controlled Substances, § 1. 32 Am. Jur. 2d, False Pretenses, § 78.

**C.J.S.** — 3A C.J.S., Antiseptic. 20 C.J.S., Cosmetic. 28 C.J.S., Drugs and Narcotics, §§ 2, 9, 10. 37 C.J.S., Fraud, § 67 et seq.

**ALR.** — Provisions of statutes against mis-

branding or false labeling of food, drug, or cosmetic products, as applicable to literature other than that attached to product itself, 143 ALR 1453.

Promotional efforts directed toward prescribing physician as affecting prescription drug manufacturer's liability for product-caused injury, 94 ALR3d 1080.

#### 26-3-15. Labeling or advertisement of a drug as an antiseptic.

The representation of a drug in its labeling or advertisement as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be or represented as an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body. (Ga. L. 1961, p. 529, § 2; Code 1933, § 79A-1002, enacted by Ga. L. 1967, p. 296, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 3 Am. Jur. 2d, Advertising, §§ 2, 5. 25 Am. Jur. 2d, Drugs and Controlled Substances, § 1. 32 Am. Jur. 2d, False Pretenses, § 78.

**C.J.S.** — 3A C.J.S., Antiseptic. 20 C.J.S., Cosmetic. 28 C.J.S., Drugs and Narcotics, §§ 2, 9, 10. 37 C.J.S., Fraud, § 67 et seq.

**ALR.** — Provisions of statutes against mis-

branding or false labeling of food, drug, or cosmetic products, as applicable to literature other than that attached to product itself, 143 ALR 1453.

Promotional efforts directed toward prescribing physician as affecting prescription drug manufacturer's liability for product-caused injury, 94 ALR3d 1080.

#### 26-3-16. Promulgation of regulations; conformity with federal act.

(a) The authority to promulgate regulations for the efficient enforcement of this chapter is vested in the State Board of Pharmacy. The board is authorized to make the regulations promulgated under this chapter conform insofar as practicable with those promulgated under the federal act.

(b) No drug, device, or cosmetic which is subject to and complies with regulations promulgated under the provisions of the Federal Food, Drug, and Cosmetic Act relating to adulteration and misbranding shall be deemed to be adulterated or misbranded in violation of this chapter because of its failure to comply with regulations promulgated under this chapter insofar as the regulations are in conflict with regulations relating to adulteration and misbranding under the Federal Food, Drug, and Cosmetic Act. (Ga. L.



1961, p. 529, § 15; Code 1933, § 79A-1014, enacted by Ga. L. 1967, p. 296, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 17, 69, 96. 54A  
**C.J.S.** — 28 C.J.S., Drugs and Narcotics, § 8 et seq.  
 Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices, § 1168 et seq.

#### **26-3-17. Inspection of factories, warehouses, establishments, or vehicles; samples and specimens.**

The State Board of Pharmacy or its duly authorized agent shall have free access at all reasonable times to any factory, warehouse, or establishment in which drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce or to enter any vehicle being used to transport or hold such drugs, devices, or cosmetics in commerce for the purpose:

(1) Of inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this chapter are being violated; or

(2) To secure samples or specimens of any drug, device, or cosmetic after paying or offering to pay for such sample. It shall be the duty of the State Board of Pharmacy to make or cause to be made examinations of samples secured under this Code section to determine whether or not this chapter is being violated. (Ga. L. 1961, p. 529, § 16; Code 1933, § 79A-1015, enacted by Ga. L. 1967, p. 296, § 1.)

#### RESEARCH REFERENCES

**C.J.S.** — 28 C.J.S., Drugs and Narcotics, § 8.

#### **26-3-18. Assistance in enforcement from Department of Agriculture or Department of Human Resources.**

In addition to the remedies provided in this chapter and to provide for more efficient enforcement of this chapter, the State Board of Pharmacy or the director of the Georgia Drugs and Narcotics Agency may ask the Department of Agriculture and the Department of Human Resources for assistance; and, in such event, either or both such departments may render such assistance. Any employee or agent of either such department engaged in the rendering of such assistance shall be an authorized agent of the board. (Ga. L. 1961, p. 529, § 16A; Code 1933, § 79A-1016, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1977, p. 625, § 1.)

**26-3-19. Reports and publications by State Board of Pharmacy.**

(a) The State Board of Pharmacy may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

(b) The board may also cause to be disseminated such information regarding drugs, devices, and cosmetics as the board deems necessary in the interest of public health and the protection of the consumer against fraud.

(c) Nothing in this Code section shall be construed to prohibit the board from collecting, reporting, and illustrating the results of the investigations of the board. (Ga. L. 1961, p. 529, § 17; Code 1933, § 79A-1017, enacted by Ga. L. 1967, p. 296, § 1.)

**26-3-20. Injunctions for violations of Code Section 26-3-3.**

In addition to the remedies provided for in this chapter, the State Board of Pharmacy is authorized to bring an action in the appropriate court of the county for an injunction. Such court shall have jurisdiction, upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating Code Section 26-3-3, notwithstanding whether or not there exists an adequate remedy at law. (Ga. L. 1961, p. 529, § 4; Code 1933, § 79A-1004, enacted by Ga. L. 1967, p. 296, § 1.)

**OPINIONS OF THE ATTORNEY GENERAL**

**Board's remedies when violator outside its jurisdiction.** — When the alleged violator is outside the jurisdiction of the State Board of Pharmacy, the recourse of the board lies in the notification of the federal authorities

charged with the enforcement of federal laws in the area of nonmailable items and the regulation of drugs, medicines and poisons. 1969 Op. Att'y Gen. No. 69-121.

**RESEARCH REFERENCES**

**C.J.S.** — 28 C.J.S., Drugs and Narcotics, § 85.

**26-3-21. Construction of chapter.**

The provisions of this chapter regarding the selling of drugs, devices, or cosmetics shall be considered to include the manufacture, production, processing, packing, exposure, offering, possession, and holding of any such article for sale, the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any drug or cosmetic establishment. (Ga. L. 1961, p. 529, § 2; Code 1933, § 79A-1002, enacted by Ga. L. 1967, p. 296, § 1.)

**Cross references.** — Insurance coverage different than use authorized by FDA, § 33-24-59.11.

### JUDICIAL DECISIONS

**This title is not unconstitutional** as violating the provisions of Ga. Const. 1945, Art. III, Sec. VII, Para. VIII (see Ga. Const. 1983, Art. III, Sec. V, Para. III), which prohibits the inclusion of more than one subject matter in any act of the General Assembly. *Crumley v. Head*, 225 Ga. 246, 167 S.E.2d 651 (1969) (decided under former Ga. Const. 1945, Art. III, Sec. VII, Para. VIII).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 3 Am. Jur. 2d, Advertising, §§ 2, 5. 25 Am. Jur. 2d, Drugs and Controlled Substances, § 1. 32 Am. Jur. 2d, False Pretenses, § 78.

**C.J.S.** — 3A C.J.S., Antiseptic. 20 C.J.S., Cosmetic. 28 C.J.S., Drugs and Narcotics, §§ 2, 8, 9. 37 C.J.S., Fraud, § 67 et seq.

**ALR.** — Provisions of statutes against mis-

branding or false labeling of food, drug, or cosmetic products, as applicable to literature other than that attached to product itself, 143 ALR 1453.

Promotional efforts directed toward prescribing physician as affecting prescription drug manufacturer's liability for product-caused injury, 94 ALR3d 1080.

### 26-3-22. Other laws unaffected by chapter.

(a) This chapter shall be cumulative and supplemental to any and all existing laws relating to the subject matter of drugs. Specifically, nothing contained in this chapter shall be so construed as to relieve any person, firm, or corporation from complying with any requirements as prescribed by Chapter 4 of this title, Article 3 of Chapter 13 of Title 16, the "Dangerous Drug Act," Article 2 of Chapter 13 of Title 16, the "Georgia Controlled Substances Act," or Title 21 C.F.R. 210, the federal "current good manufacturing practices in manufacturing, processing, packing, or holding of drugs: general."

(b) Nothing contained in this chapter shall amend, alter, supersede, or replace the laws of this state relative to feed, food, animal remedies, hog cholera serum or virus, drugs permitted to be added to feeds, bottling supplies, nor the duty and authority of the Commissioner of Agriculture. (Code 1933, § 79A-1018, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1986, p. 1555, § 8; Ga. L. 1999, p. 81, § 26.)

### JUDICIAL DECISIONS

**This title is not unconstitutional** as violating the provisions of Ga. Const. 1945, Art. III, Sec. VII, Para. VIII (see Ga. Const. 1983, Art. III, Sec. V, Para. III), which prohibits the inclusion of more than one subject matter in any act of the General Assembly. *Crumley v. Head*, 225 Ga. 246, 167 S.E.2d 651 (1969) (decided under former Ga. Const. 1945, Art. III, Sec. VII, Para. VIII).



**26-3-23. Penalty for impeding, obstructing, hindering, or preventing drug agent from performance of duty.**

Any manufacturer, dealer, wholesaler, or other person who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent any drug agent or other person in the performance of his duty in collecting samples or otherwise in connection with this chapter shall be guilty of a misdemeanor. (Code 1933, § 79A-9914, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1977, p. 625, § 1.)

**RESEARCH REFERENCES**

**C.J.S.** — 28 C.J.S., Drugs and Narcotics, §§ 29, 101 et seq.

**26-3-24. Penalty for violation of chapter.**

Any person who violates this chapter shall be guilty of a misdemeanor. (Code 1933, § 79A-9912, enacted by Ga. L. 1967, p. 296, § 1.)

**RESEARCH REFERENCES**

**C.J.S.** — 28 C.J.S., Drugs and Narcotics, § 101 et seq.

seizure of property alleged to be illegally used, 17 ALR 568; 50 ALR 97.

**ALR.** — Right to jury trial in case of

## CHAPTER 4

### PHARMACISTS AND PHARMACIES

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## PHARMACISTS AND PHARMACIES

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**Editor's notes.** — Ga. L. 1998, p. 686, § 1, effective July 1, 1998, repealed the Code sections formerly codified at this chapter and enacted the current chapter. The former chapter consisted of Code Sections 26-4-1 through 26-4-12 (Article 1), 26-4-30 through 26-4-41 (Article 2, Part 1), 26-4-50 through 26-4-55 (Article 2, Part 2), 26-4-70 through 26-4-87 (Article 2, Part 3), 26-4-100 through 26-4-123 (Article 2, Part 4), 26-4-130 through 26-4-138 (Article 2, Part 4A), 26-4-140 through 26-4-148 (Article 2, Part 5), 26-4-160 through 26-4-163 (Article 2, Part 6), and was based on Code 1933, § 79A-101 et seq., enacted by Ga. L. 1967, p. 296, § 1 and Ga. L. 1860, p. 54, § 1, Ga. L. 1876, p. 24 §§ 1-3, Ga. L. 1882, § 4557(a) et seq., Penal Code 1895, § 470 et seq., Penal Code 1910, § 454 et seq., Ga. L. 1927, p. 291, § 14, Ga. L. 1931, p. 7, § 89, Ga. L. 1933, § 42-701 et seq., Ga. L. 1933, § 84-1314, Ga. L. 1939, p. 228, § 1-3, Ga. L. 1945, p. 421, § 1, Ga. L. 1947, p. 734, §§ 1-2, Ga. L. 1947, p. 1463, §§ 1, 4, Ga. L. 1947, p. 1471, §§ 5, 7, Ga. L. 1953, p. 395, § 1, Ga. L. 1956, p. 345, § 1, Ga. L. 1956, p. 724, § 2, Ga. L. 1957, p. 92, § 1, Ga. L. 1961, p. 529, §§ 19-20, 25, Ga. L. 1962, p. 105, §§ 17, 18, 20, 21, Ga. L. 1964, p. 276, § 1, Ga. L. 1966, p. 254, § 1, Ga. L. 1969, p. 936, § 1, Ga. L. 1970, p. 215, § 1,

Ga. L. 1970, p. 465, § 1, Ga. L. 1972, p. 1015, §§ 19, 21, Ga. L. 1974, p. 221, § 2, Ga. L. 1974, p. 535, § 1-2, Ga. L. 1975, p. 97, § 1, Ga. L. 1976, p. 675, § 1, Ga. L. 1977, p. 625, §§ 1-6, Ga. L. 1977, p. 1093, § 1, Ga. L. 1978, p. 1668, §§ 1, 4, Ga. L. 1978, p. 1962, §§ 1-3, Ga. L. 1978, p. 1668, § 1-4, Ga. L. 1978, p. 1962, §§ 1, 3, Ga. L. 1979, p. 859, § 1-2, Ga. L. 1980, p. 1746, §§ 1, 1.1, 1.2, 1.3, Ga. L. 1980, p. 1761, § 1, Ga. L. 1981, p. 557, §§ 1, 6, Ga. L. 1981, p. 782, § 1-2, Ga. L. 1982, p. 3, § 26, Ga. L. 1982, p. 1156, §§ 1, 2, 4, 6, 7, 8, 9, Ga. L. 1982, p. 1264, §§ 1, 4, Ga. L. 1982, p. 2403, §§ 1, 2, 22, 23, Ga. L. 1983, p. 3, § 19, Ga. L. 1983, p. 790, §§ 1, 2, Ga. L. 1983, p. 1441, § 1, Ga. L. 1984, p. 22, § 26, Ga. L. 1985, p. 149, § 26, Ga. L. 1986, p. 10, § 26, Ga. L. 1986, p. 929, § 1, Ga. L. 1986, p. 1031, §§ 2-4, Ga. L. 1986, p. 1603, §§ 1-3, Ga. L. 1987, p. 1131, §§ 1-3, Ga. L. 1989, p. 261, § 1, Ga. L. 1989, p. 509, § 1, Ga. L. 1992, p. 6, § 26, Ga. L. 1992, p. 1307, § 1, Ga. L. 1992, p. 3137, § 43, Ga. L. 1996, p. 1425, § 1, Ga. L. 1996, p. 1609, §§ 2-9.

**Administrative rules and regulations.** — Pharmacy Regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Pharmacy, Chapter 480-10.

## RESEARCH REFERENCES

**ALR.** — State and local administrative inspection of and administrative warrants to search pharmacies, 29 ALR4th 264.

Criminal liability of pharmacy or pharma-

cist for welfare fraud in connection with supplying prescription drugs, 16 ALR5th 390.

## ARTICLE 1

### GENERAL PROVISIONS

#### 26-4-1. Short title.

This chapter shall be known and may be cited as the “Georgia Pharmacy Practice Act.” (Code 1981, § 26-4-1, enacted by Ga. L. 1998, p. 686, § 1.)

## OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — Some of the opinions rendered below were decided under former Code 1933, § 79A-518.

**Word “apothecary” in business title not**

**misleading if business clearly not pharmacy.**

— The purpose of former Code 1933, § 79A-518 (see O.C.G.A. § 26-4-117) was to safeguard the public health, safety, and wel-

fare by preventing the creation of business establishments which tend to mislead the public into believing they are pharmacies when they are not; a lounge with the business title "Apothecary Lounge" would not

likely mislead the public into believing that this establishment was a pharmacy. 1970 Op. Att'y Gen. No. 70-143 (decided under former Code 1933, § 79A-518).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 25 Am. Jur. 2d, Drugs and Controlled Substances, § 69.

**C.J.S.** — 28 C.J.S., Drugs and Narcotics, §§ 8, 9.

**ALR.** — Constitutionality of statute regu-

lating sale of poisons, drugs, or medicines, 54 ALR 730.

Constitutionality of statute regulating sale or dispensation of medicines or drugs in original package, 54 ALR 744.

### 26-4-2. Liberal construction of chapter.

The practice of pharmacy in this state is declared to be a learned profession and the practice of pharmacy affects the public health, safety, and welfare and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of pharmacy in this state as a learned profession, as defined in this chapter, should merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practice of pharmacy to ensure the quality of drugs and related devices distributed in this state. This chapter shall be liberally construed to carry out these objectives and purposes. (Code 1981, § 26-4-2, enacted by Ga. L. 1998, p. 686, § 1.)

### 26-4-3. Legislative intent.

It is the purpose of this chapter to promote, preserve, and protect the public health, safety, and welfare by and through the effective control and regulation of the practice of pharmacy; the licensure of pharmacists; the licensure, control, and regulation of all sites or persons, in or out of this state that distribute, manufacture, or sell drugs or devices used in the dispensing and administration of drugs within this state; and the regulation and control of such other materials as may be used in the diagnosis, treatment, and prevention of injury, illness, and disease of a patient or other individual. (Code 1981, § 26-4-3, enacted by Ga. L. 1998, p. 686, § 1.)

### 26-4-4. Definition of "practice of pharmacy."

The "practice of pharmacy" means the interpretation, evaluation, or dispensing of prescription drug orders in the patient's best interest; participation in drug and device selection, drug administration, drug regimen reviews, and drug or drug related research; provision of patient counseling and the provision of those acts or services necessary to provide pharmacy care; performing capillary blood tests and interpreting the results as a means to screen for or monitor disease risk factors and facilitate

patient education, and a pharmacist performing such functions shall report the results obtained from such blood tests to the patient's physician of choice; and the responsibility for compounding and labeling of drugs and devices. (Code 1981, § 26-4-4, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 277, § 1.)

#### **26-4-5. Definitions.**

As used in this chapter the term:

(1) "Administer" or "administration" means the provision of a unit dose of medication to an individual patient as a result of the order of an authorized practitioner of the healing arts.

(2) "Board of pharmacy" or "board" means the Georgia State Board of Pharmacy.

(3) "Brand name drug" means the proprietary, specialty, or trade name used by a drug manufacturer for a generic drug and placed upon the drug, its container, label, or wrapping at the time of packaging.

(4) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device as the result of a practitioner's prescription drug order or initiative based on the relationship between the practitioner, patient, and pharmacist in the course of professional practice or for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing. Compounding also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine and regularly observed prescribing patterns.

(5) "Confidential information" means information maintained by the pharmacist in the patient's records or which is communicated to the patient as part of patient counseling which is privileged and may be released only to the patient or, as the patient directs, to those practitioners and other pharmacists where, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well-being; and to such other persons or governmental agencies authorized by law to receive such confidential information.

(6) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V of Code Sections 16-13-25 through 16-13-29, Schedules I through V of 21 C.F.R. Part 1308, or both.

(7) "Dangerous drug" means any drug, substance, medicine, or medication as defined in Code Section 16-13-71.

(8) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a drug or device from one person to another, whether or not for a consideration.



(9) "Device" means an instrument, apparatus, contrivance, or other similar or related article, including any component part or accessory, which is required under federal law to bear the label, "Caution: federal or state law requires dispensing by or on the order of a physician."

(10) "Dispense" or "dispensing" means the preparation and delivery of a drug or device to a patient, patient's caregiver, or patient's agent pursuant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to, or use by, a patient.

(11) "Distribute" means the delivery of a drug or device other than by administering or dispensing.

(11.1) "Division director" means the division director of the professional licensing boards division, as provided in Chapter 1 of Title 43.

(12) "Drug" means:

(A) Articles recognized as drugs in any official compendium, or supplement thereto, designated from time to time by the board for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(B) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(C) Articles, other than food, intended to affect the structure or any function of the body of humans or animals; and

(D) Articles intended for use as a component of any articles specified in subparagraph (A), (B), or (C) of this paragraph but does not include devices.

(13) "Drug regimen review" includes but is not limited to the following activities:

(A) Evaluation of any prescription drug order and patient record for:

(i) Known allergies;

(ii) Rational therapy-contraindications;

(iii) Reasonable dose and route of administration; and

(iv) Reasonable directions for use;

(B) Evaluation of any prescription drug order and patient record for duplication of therapy;

(C) Evaluation of any prescription drug order and patient record for the following interactions:

- (i) Drug-drug;
- (ii) Drug-food;
- (iii) Drug-disease; and
- (iv) Adverse drug reactions; and

(D) Evaluation of any prescription drug order and patient record for proper utilization, including overutilization or underutilization, and optimum therapeutic outcomes.

(14) “Drug researcher” means a person, firm, corporation, agency, department, or other entity which handles, possesses, or utilizes controlled substances or dangerous drugs, as defined in Chapter 13 of Title 16, for purposes of conducting research, drug analysis, animal training, or drug education, as such purposes may be further defined by the board, and is not otherwise registered as a pharmacist, pharmacy, drug wholesaler, distributor, supplier, or medical practitioner.

(15) “Emergency service provider” means licensed ambulance services, first responder services or neonatal services, or any combination thereof.

(16) “Extern” or “pharmacy extern” means an individual who is a student currently enrolled in an approved school or college of pharmacy and who has been assigned by the school or college of pharmacy to a licensed pharmacy for the purposes of obtaining practical experience and completing a degree in pharmacy. For the purposes of this chapter, a pharmacy extern may engage in any activity or perform any function which a pharmacy intern may perform under the direct supervision of a licensed pharmacist.

(17) “Federal act” or “Federal Food, Drug, and Cosmetic Act” means the Federal Food, Drug, and Cosmetic Act of the United States of America, approved June 25, 1938, officially cited as Public Document 717, 75th Congress (Chapter 675-3rd Sess.) and all amendments thereto, and all regulations promulgated thereunder by the commissioner of the Federal Food and Drug Administration.

(18) “Generic name” means a chemical name, a common or public name, or an official name used in an official compendium recognized by the Federal Food, Drug, and Cosmetic Act, as amended.

(18.1) “Institution” means any licensed hospital, nursing home, personal care home, hospice, health clinic, or prison clinic.

(19) “Intern” or “pharmacy intern” means an individual who is:

(A) A student who is currently enrolled in an approved school or college of pharmacy, has registered with the board, and has been licensed as a pharmacy intern;

(B) A graduate of an approved school or college of pharmacy who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist; or

(C) An individual who does not otherwise meet the requirements of subparagraph (A) or (B) of this paragraph and who has established educational equivalency by obtaining a Foreign Pharmacy Graduate Examination Committee (FPGEC) certificate and is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist.

(20) Reserved.

(21) “Labeling” means the process of preparing and affixing a label to any drug container exclusive, however, of the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal, state, or federal and state law or rule.

(22) “Manufacturer” means a person engaged in the manufacturing of drugs or devices.

(23) “Manufacturing” means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of any substance or labeling or relabeling of its container and the promotion and marketing of such drugs or devices. Manufacturing also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons.

(23.5) “Narcotic treatment program clinic pharmacy” means a pharmacy which is attached to, located in, or otherwise a part of and operated by a narcotic treatment program which provides an opiate replacement treatment program, as designated or defined by the Department of Human Resources or such other state agency as may be designated as the state authority for the purposes of implementing the narcotic treatment program authorized by federal and state laws and regulations.

(24) “Nonprescription drug” means a drug which may be sold without a prescription and which is labeled for use by the consumer in accordance with the requirements of the laws and rules of this state and the federal government.

(25) “Patient counseling” means the oral communication by the pharmacist of information, as defined in the rules of the board, to the patient, patient’s caregiver, or patient’s agent, in order to improve therapy by ensuring proper use of drugs and devices.



(26) "Person" means an individual, corporation, partnership, or association.

(27) "Pharmaceutically equivalent" means drug products that contain identical amounts of the identical active ingredient, in identical dosage forms, but not necessarily containing the same inactive ingredients.

(28) "Pharmacist" means an individual currently licensed by this state to engage in the practice of pharmacy. This recognizes a pharmacist as a learned professional who is authorized to provide patient services and pharmacy care.

(29) "Pharmacist in charge" means a pharmacist currently licensed in this state who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs and who is personally in full and actual charge of such pharmacy and personnel.

(30) "Pharmacy" means:

(A) The profession, art, and science that deals with pharmacy care, drugs, or both, medicines, and medications, their nature, preparation, administration, dispensing, or effect; or

(B) Any place licensed in accordance with this chapter wherein the possessing, displaying, compounding, dispensing, or selling of drugs may be conducted, including any and all portions of the building or structure leased, used, or controlled by the licensee in the conduct of the business or profession licensed by the board at the address for which the license was issued.

(31) "Pharmacy care" means those services related to the interpretation, evaluation, or dispensing of prescription drug orders, the participation in drug and device selection, drug administration, and drug regimen reviews, and the provision of patient counseling related thereto.

(32) "Pharmacy technician" means those support persons utilized in pharmacies whose responsibilities are to provide nonjudgmental technical services concerned with the preparation for dispensing of drugs under the direct supervision and responsibility of a pharmacist.

(33) "Practitioner" or "practitioner of the healing arts" means a physician, dentist, podiatrist, or veterinarian and shall include any other person licensed under the laws of this state to use, mix, prepare, dispense, prescribe, and administer drugs in connection with medical treatment to the extent provided by the laws of this state.

(34) "Preceptor" means an individual who is currently licensed as a pharmacist by the board, meets the qualifications as a preceptor under the rules of the board, and participates in the instructional training of pharmacy interns.

(35) "Prescription drug" or "legend drug" means a drug which, under federal law, is required, prior to being dispensed or delivered, to be labeled with either of the following statements: "Caution: federal law prohibits dispensing without prescription" or "Caution: federal law restricts this drug to use by, or on the order of, a licensed veterinarian"; or a drug which is required by any applicable federal or state law or rule to be dispensed pursuant only to a prescription drug order or is restricted to use by practitioners only; or a controlled substance, as defined in paragraph (6) of this Code section or a dangerous drug as defined in paragraph (7) of this Code section.

(36) "Prescription drug order" means a lawful order of a practitioner for a drug or device for a specific patient.

(37) "Prospective drug use review" means a review of the patient's drug therapy and prescription drug order, as defined in the rules of the board, prior to dispensing the drug as part of a drug regimen review.

(38) "Reverse drug distributor" means a person, firm, or corporation which receives and handles drugs from within this state which are expired, discontinued, adulterated, or misbranded, under the provisions of Chapter 3 of this title, the "Georgia Drug and Cosmetic Act," from a pharmacy, drug distributor, or manufacturer for the purposes of destruction or other final disposition or for return to the original manufacturer of a drug.

(39) "Significant adverse drug reaction" means a drug related incident that may result in serious harm, injury, or death to the patient.

(40) "Substitution" means to dispense pharmaceutically equivalent and therapeutically equivalent drug products as regulated by the board in place of the drug prescribed.

(41) "Wholesale distributor" means any person engaged in wholesale distribution of drugs, including but not limited to manufacturers; repackagers; own label distributors; private label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and retail and hospital pharmacies that conduct wholesale distributions. (Code 1981, § 26-4-5, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26; Ga. L. 1999, p. 277, § 1.1; Ga. L. 2000, p. 1706, § 22.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1998, "chapter" was substituted for "Chapter" in the first sentence of subparagraph (30)(B).

Pursuant to Code Section 28-9-5, in 2000, and due to the redesignation of paragraph (20) as paragraph (11.1), paragraph (20) has been set out as reserved.

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the provisions, decisions under former sections, are included in the annotations for this Code section.

**Label.** — The inscription "714" signifies something associated with methaqualone and this inscription on the caps of bottles containing an unidentified substance is a label falsely identifying the contents as

methaqualone. *Luck v. State*, 163 Ga. App. 657, 295 S.E.2d 584 (1982).

**Ga. L. 1972, pp. 948, 949 (see O.C.G.A. § 26-4-5) was not unconstitutionally vague or in violation of Ga. Const. 1945, Art. I, Sec. I, Para. III (see Ga. Const. 1983, Art. I, Sec. I, Para. I).** *State v. Bonini*, 236 Ga. 896, 225 S.E.2d 907 (1976) (decided under former Ga. Const. 1945, Art. I, Sec. I, Para. III).

## OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — Some of the opinions cited below were decided under former Code 1933, § 79A-102 and former § 26-4-2.

**Licensing requirements for state and local agencies.** — While state and local agencies are subject to the requirements of the Georgia Controlled Substances Act (O.C.G.A. § 16-13-20 et seq.) because of O.C.G.A. § 16-13-21(20), they are not subject to the requirements of the Dangerous Drug Act (O.C.G.A. § 16-13-70 et seq.), and if the State Board of Pharmacy desires the requirements of the Dangerous Drug Act to be imposed upon state agencies and their practitioners, legislation should be offered changing the definition of "person" in O.C.G.A. Title 26, Chapter 4 to coincide with the definition now found in the Controlled Substances Act, and to also make that definition applicable to the Dangerous Drug Act. 1986 Op. Att'y Gen. No. 86-28 (decided under former § 26-4-2).

The licensing requirements of former Code 1933, Title 79A (see O.C.G.A. Title 26) were directed toward "persons," a term de-

fined by former Code 1933, § 79A-102 (see O.C.G.A. § 26-3-2(13)) to include "an individual, a partnership, a corporation or an association"; if there was no other specific reference to the state or its political subdivision evidencing an intent to include, that section served to exclude the state and its political subdivisions from the licensing requirements of that title. 1974 Op. Att'y Gen. No. 74-17 (decided under former Code 1933, § 79A-102).

**Nurse can telephone in prescription ordered by registered practitioner.** — Where the registered practitioner has actually ordered the controlled substance with the nurse merely relaying the prescription by telephone, former Code 1933, §§ 79A-820 and 79A-102 (see O.C.G.A. §§ 16-13-41 and 26-4-5) did not specifically proscribe this activity. 1979 Op. Att'y Gen. No. 79-32 (decided under former Code 1933, § 79A-102).

**Nurses may not write or telephone in prescriptions by referring to a written protocol.** 1988 Op. Att'y Gen. No. 88-9 (decided under former § 26-4-2).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 1, 14 et seq.

**C.J.S.** — 28 C.J.S., Drugs and Narcotics, §§ 2, 6, 7.

**ALR.** — What is "device" within meaning of § 201(h) of Federal Food, Drug, and Cosmetic Act (21 USCS § 321(h)), 129 ALR Fed. 343.



## ARTICLE 2

## STATE BOARD OF PHARMACY

**26-4-20. State Board of Pharmacy continued; enforcement of provisions of chapter vested in board.**

(a) The Georgia State Board of Pharmacy existing immediately preceding July 1, 1998, is continued in existence, and members serving on the board immediately preceding that date shall continue to serve out their terms of office and until their respective successors are appointed and qualified.

(b) The responsibility for enforcement of the provisions of this chapter shall be vested in the Georgia State Board of Pharmacy. The board shall have all of the duties, powers, and authority specifically granted by or necessary for the enforcement of this chapter, as well as such other duties, powers, and authority as it may be granted from time to time by applicable law. (Code 1981, § 26-4-20, enacted by Ga. L. 1998, p. 686, § 1.)

## JUDICIAL DECISIONS

**Editor's notes.** — Some of the cases cited below were decided under former Code 1933, § 79A-301.

**Board and board members immune from damage actions.** — Because of the control the state exercises over the State Board of Pharmacy, and because the board appears to be an entity of the state as defined by

Georgia law, the board, and the board members in their official capacities, is immune from the damage action by virtue of its eleventh amendment immunity. *Shepard v. Byrd*, 581 F. Supp. 1374 (N.D. Ga. 1984) (decided under former Code 1933, § 79A-301).

## OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — Some of the opinions cited below were decided under former Code 1933, Ch. 79A-3.

**State Board of Pharmacy and State Drug Inspector control dangerous drugs.** — The control of rabies generally is delegated to

county boards of health, and the control of dangerous drugs is vested with the State Board of Pharmacy and the State Drug Inspector. 1975 Op. Att'y Gen. No. 75-23 (decided under former Code 1933, Ch. 79A-3).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 25 Am. Jur. 2d, Drugs and Controlled Substances, § 69.

**C.J.S.** — 28 C.J.S., Drugs and Narcotics, § 30.

**26-4-21. Eligibility requirements for board members; oath of office.**

(a) Each of the seven pharmacist members of the board shall, at the time of appointment:

- (1) Be a resident of this state for not less than six months;

(2) Be currently licensed and in good standing to engage in the practice of pharmacy in this state;

(3) Be actively engaged in the practice of pharmacy in this state;

(4) Have five years of experience in the practice of pharmacy in this state after licensure; and

(5) Not be officially employed as a full-time faculty member by any school or college of pharmacy.

(b) The one consumer member of the board shall be a resident of Georgia who has attained the age of majority and shall not have any connection whatsoever with the pharmaceutical industry.

(c) Appointees to the board shall immediately after their appointment take and subscribe to an oath or affirmation before a qualified officer that they will faithfully and impartially perform the duties of the office, which oath shall be filed with the Secretary of State, whereupon the Secretary of State shall issue to each appointee a certificate of appointment. (Code 1981, § 26-4-21, enacted by Ga. L. 1998, p. 686, § 1.)

**26-4-22. Number and terms of members; appointment; vacancies.**

(a) The board shall consist of seven members possessing the qualification specified in subsection (a) of Code Section 26-4-21 and one additional member possessing the qualifications specified in subsection (b) of Code Section 26-4-21 who shall be appointed by the Governor for a term of five years or until their successors are appointed and qualified. Pharmacist members shall represent a diversity of practice settings and geographic dispersion of practitioners across the state.

(b) At the annual meeting of the Georgia Pharmacy Association, there may be nominated by such licensed pharmacists as may be present three practicing registered pharmacists who shall meet the qualifications imposed by subsection (a) of Code Section 26-4-21 to fill the next vacancy occurring on the board, except a vacancy in the consumer member position on said board, by reason of expiration of term. The secretary of said association may regularly submit to the Governor the names of the three pharmacists so nominated and the Governor may make the appointment to fill such vacancy from the names so submitted. Should any vacancy occur upon the board, other than in the consumer member position on the board and other than by reason of expiration of term, such vacancy may be filled by appointment by the Governor for the unexpired term from a group of three practicing registered pharmacists nominated as provided in this subsection at any regular or special meeting of the Georgia Pharmacy Association.

(c) The consumer member of the board shall also be appointed by the Governor. Such member shall vote only on matters relating to administra-

tion and policy which do not directly relate to practical and scientific examination of pharmacists for licensing in Georgia. Vacancies occurring in the membership of the board occupied by a consumer shall be filled by the Governor for the unexpired term of office. (Code 1981, § 26-4-22, enacted by Ga. L. 1998, p. 686, § 1.)

#### **26-4-23. Removal of board members.**

Any member who has failed to attend three consecutive regular monthly meetings of the board for any reason other than illness of such member shall be subject to removal by the Governor upon request of the board. The president of the board shall notify the Governor in writing when any such member has failed to attend three consecutive regular monthly meetings. Any member of the board may be removed by the Governor as provided in Code Section 43-1-17. (Code 1981, § 26-4-23, enacted by Ga. L. 1998, p. 686, § 1.)

#### **26-4-24. Meetings and organization; appeals; serving of notices and legal process.**

The board shall meet at least annually to organize and elect a president and a vice-president from its members. The division director shall be the secretary of the board and shall have all the power, duties, and authority with reference to such board as shall be prescribed by Chapter 1 of Title 43 and shall perform such other duties as may be prescribed by the board. All appeals from the decision of the board, all documents or applications required by law to be filed with the board, and any notice or legal process to be served upon the board may be filed with or served upon the division director at his or her office in the county of domicile of the professional licensing boards division. (Code 1981, § 26-4-24, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 2000, p. 1706, § 23.)

#### **26-4-25. Compensation of members.**

Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2. (Code 1981, § 26-4-25, enacted by Ga. L. 1998, p. 686, § 1.)

#### **26-4-26. Meetings; notice; quorum; open meetings.**

(a) The board shall meet on a regular basis to transact its business. The board shall meet at such additional times as it may determine. Such additional meetings may be called by the president of the board or by at least two-thirds of the members of the board.

(b) Notice of all meetings of the board shall be given in the manner and pursuant to requirements prescribed by Chapter 14 of Title 50 relating to open meetings.



(c) A majority of the members of the board shall constitute a quorum for the conduct of a board meeting and, except where a greater number is required by this chapter or by any rule of the board, all actions of the board shall be by a majority of a quorum.

(d) All board meetings and hearings shall be open to the public. The board may, in its discretion and according to law, conduct any portion of its meeting in executive session closed to the public. (Code 1981, § 26-4-26, enacted by Ga. L. 1998, p. 686, § 1.)

#### **26-4-27. Authority to establish rules and regulations.**

The board may establish such rules and regulations not inconsistent with this chapter and as in its judgment will best carry out the requirements thereof. (Code 1981, § 26-4-27, enacted by Ga. L. 1998, p. 686, § 1.)

#### **26-4-28. Powers, duties, and authority.**

(a) The board shall have the power, duty, and authority for the control and regulation of the practice of pharmacy in the State of Georgia including, but not limited to, the following:

(1) The licensing by examination or by license transfer of applicants who are qualified to engage in the practice of pharmacy under the provisions of this chapter;

(2) The renewal of licenses to engage in the practice of pharmacy;

(3) The establishment and enforcement of compliance with professional standards and rules of conduct of pharmacists engaged in the practice of pharmacy;

(4) The determination and issuance of standards for recognition and approval of degree programs of schools and colleges of pharmacy whose graduates shall be eligible for licensure in this state, and the specification and enforcement of requirements for practical training including internship;

(5) The enforcement of those provisions of this chapter relating to the conduct or competence of pharmacists practicing in this state and the suspension, revocation, or restriction of licenses to engage in the practice of pharmacy;

(6) The licensure and regulation of pharmacies and pharmacy interns;

(7) The regulation of other employees in the prescription or pharmacy department;

(8) The collection of professional demographic data;

(9) The right to seize any such drugs and devices found by the board to constitute an imminent danger to the public health and welfare;

(10) The establishment of minimum specifications for the physical facilities, technical equipment, environment, supplies, personnel, and procedures for the storage, compounding, and dispensing of such drugs or devices utilized within the practice of pharmacy;

(11) The establishment of minimum standards for the purity and quality of such drugs utilized within the practice of pharmacy;

(12) The establishment of minimum standards for the purity and quality of such devices and other materials utilized within the practice of pharmacy;

(13) The issuance and renewal of licenses of all persons engaged in the manufacture and distribution of drugs;

(14) The issuance and renewal of licenses of all persons engaged in the manufacture and distribution of devices utilized within the practice of pharmacy;

(15) The inspection of any licensed person at all reasonable hours for the purpose of determining if any provisions of the laws governing the legal distribution of drugs or devices or the practice of pharmacy are being violated. The board and its officers, agents, and designees shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to drugs, devices, and the practice of pharmacy;

(16) The investigation of alleged violations of this chapter or any other law in this state pertaining to, or in connection with, persons or firms licensed by the board or otherwise authorized by the laws of this state to manufacture, sell, distribute, dispense, or possess drugs, medicines, poisons, cosmetics, or devices, as related to misbranded or counterfeit drugs, or any rules and regulations promulgated by the board under this chapter; the conducting of investigative interviews or full board hearings, with or without the necessity of utilizing the Office of State Administrative Hearings, in respect thereto when in its discretion it appears to be necessary; and the bringing of such violations to the notice of the Attorney General;

(17) The listing at any time upon either a list under Article 3 of Chapter 13 of Title 16, the "Dangerous Drug Act," or upon a schedule under Article 2 of Chapter 13 of Title 16, the "Georgia Controlled Substances Act," of any drug found to be potentially dangerous to public safety if dispensed without prescription;

(18) The expunging of the pharmacy related practice record of any pharmacist whose record consists of a sole sanction resulting from

alcohol impairment and whose pharmacy related practice record during a five-year time period dating from the time of the sanction has incurred no additional charges or infractions;

(19) Restricting the inspection or examination of records or access to any area licensed and under the control of any registrant, which has been issued a permit by the board, to members of the board, agents for the Georgia Drugs and Narcotics Agency, the United States Drug Enforcement Administration, the Georgia Department of Medical Assistance, or other federal agencies or agencies of this state otherwise entitled to such inspections or examinations by law, subpoena, or court order. This paragraph specifically prohibits inspections or examinations of board registrants or any requirement which forces board registrants to allow inspection or examination, or both, of their records by representatives for any nongovernment affiliated, private organization for any purpose since the access of patient prescription records is restricted by this chapter and access by such private organizations is unnecessary in that this access only duplicates existing record-keeping and inspection requirements already addressed by the laws and regulations of the board and other government organizations. This restriction shall also prohibit a private, nongovernment affiliated organization from examining or copying continuing education certificates maintained by individual registrants. Nothing in this paragraph shall prohibit the pharmacist in charge from voluntarily allowing appropriate agencies and organizations to inspect or examine the records and pharmacy area under the control of the pharmacist in charge provided such inspections or examinations are for the purposes of ensuring the quality of care provided to patients; and

(20) Serving as the sole governmental or other authority which shall have the authority to approve or recognize accreditation or certification programs for specialty pharmacy practice or to determine the acceptability of entities which may accredit pharmacies or certify pharmacists in a specialty of pharmacy practice, and the board may require such accreditation or certification as a prerequisite for specialty or advanced pharmacy practice. Such accreditation and certification standards for specialties shall be set forth in rules promulgated by the board with such rules to contain the required qualifications or limitations. Any accreditation or certification for specialty pharmacy practice approved or recognized by the board shall be deemed sufficient to meet any and all standards, licensure, or requirements, or any combination thereof, otherwise set forth by any private entity or other government agency to satisfy its stated goals and standards for such accreditation or certification. Nothing in this paragraph shall prohibit private entities, government agencies, professional organizations, or educational institutions from submitting accreditation or certification programs for the review and potential approval or recognition by the board. Accreditation and certification for specialty pharmacy practice under this paragraph shall be subject to the following conditions:



(A) Applications shall be submitted as set forth in rules promulgated or approved by the board for accreditation or certification;

(B) Only a pharmacist registered by this state and maintaining an active license in good standing is eligible for certification in a specialty pharmacy practice by the board;

(C) Only a pharmacy registered by this state and maintaining an active license in good standing is eligible for accreditation for specialty pharmacy practice by the board;

(D) Any board approved or recognized accreditation for a specialty pharmacy practice of a pharmacy is to be deemed sufficient and shall satisfy any standards or qualifications required for payment of services rendered as set forth by any insurance company, carrier, or similar third-party payor plan in any policy or contract issued, issued for delivery, delivered, or renewed on or after July 1, 1999;

(E) Any board approved or recognized specialty certification issued to a pharmacist is deemed sufficient and shall satisfy any standards or qualifications required for payment of services rendered as set forth by any insurance company, carrier, or similar third-party payor plan in any policy or contract issued, issued for delivery, delivered, or renewed on or after July 1, 1999; and

(F) The board may deny, revoke, limit, suspend, probate, or fail to renew the accreditation or specialty certification of a pharmacy, pharmacist, or both for cause as set forth in Code Section 26-4-60 or for a violation of Chapter 13 of Title 16 or if the board determines that a pharmacy, pharmacist, or both, no longer meet the accreditation or certification requirements of the board. Before such action, the board shall serve upon the pharmacist in charge of a pharmacy or pharmacist an order to show cause why accreditation or certification should not be denied, revoked, limited, suspended, or probated or why the renewal should not be refused. The order to show cause shall contain a statement for the basis therefor and shall call upon the pharmacist in charge of a pharmacy, the pharmacist, or both, to appear before the board at a time and place not more than 60 days after the date of the service of the order.

(b) Proceedings by the board in the exercise of its authority to cancel, suspend, or revoke any license issued under the terms of this chapter shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." In all such proceedings the board shall have authority to compel the attendance of witnesses and the production of any book, writing, or document upon the issuance of a subpoena therefor signed by the secretary of the board. In any hearing in which the fitness of a licensee or applicant to practice pharmacy is in question, the board may exclude all persons from its deliberation of the appropriate action to be

taken and may, when it deems it necessary, speak to a licensee or applicant in private.

(c) The board shall have such other duties, powers, and authority as may be necessary to the enforcement of this chapter and to the enforcement of board rules made pursuant thereto which shall include, but are not limited to, the following:

(1) The board may join such professional organizations and associations organized exclusively to promote the improvement of the standards of the practice of pharmacy for the protection of the health and welfare of the public and whose activities assist and facilitate the work of the board;

(2) The board may place under seal all drugs or devices that are owned by or in the possession, custody, or control of a licensee at the time his or her license is suspended or revoked or at the time the board refuses to renew his or her license. Except as otherwise provided in this Code section, drugs or devices so sealed shall not be disposed of until appeal rights under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," have expired, or an appeal filed pursuant to such chapter has been determined. The court involved in an appeal filed pursuant to such chapter may order the board, during the pendency of the appeal, to sell sealed drugs that are perishable. The proceeds of such a sale shall be deposited with that court;

(3) Except as otherwise provided to the contrary, the board shall exercise all of its duties, powers, and authority in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act";

(4) In addition to the fees specifically provided for in this chapter, the board may assess additional reasonable fees for services rendered to carry out its duties and responsibilities as required or authorized by this chapter or the rules and regulations promulgated by the board. Such services rendered shall include but not be limited to the following:

- (A) Issuance of duplicate certificates or identification cards;
  - (B) Certification of documents;
  - (C) License transfer;
  - (D) Examination administration to a licensure applicant; and
  - (E) Examination materials; and
- (5) Cost recovery.

(A) For any order issued in resolution of a disciplinary proceeding before the board, the board may direct any licensee found guilty of a charge involving a violation of any drug laws or rules to pay to the board a sum not to exceed the reasonable costs of the investigation and

prosecution of the case and, in any case, not to exceed \$25,000.00. The costs to be assessed shall be fixed by the board and the costs so recovered shall be paid to the state treasury; and

(B) In the case of a pharmacy or wholesale distributor, the order issued may be made to the corporate owner, if any, and to any pharmacist, officer, owner, or partner of the pharmacy or wholesale distributor who is found to have had knowledge of or have participated knowingly in one or more of the violations set forth in this Code section.

Where an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for payment in the court in the county where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the board may have as to any person directed to pay costs. In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment. (Code 1981, § 26-4-28, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26; Ga. L. 1999, p. 277, §§ 2, 3.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1998, "\$25,000.00" was substituted for "\$25,000" at the end of the first sentence in subparagraph (c)(5)(A).

### JUDICIAL DECISIONS

**Editor's notes.** — Some of the cases cited below were decided under former Code 1933, § 79A-302.

**Drug criminal investigations transferred from board to Department of Public Safety's Division of Investigation.** — Under the Executive Reorganization Act of 1972, Ga. L. 1972, p. 1015, §§ 19, 20, the functions of the Georgia State Board of Pharmacy relating to alleged violations pertaining to drugs were

transferred to the Department of Public Safety, and the criminal investigative functions so transferred were assigned to the Division of Investigation. *Smith v. State*, 131 Ga. App. 722, 206 S.E.2d 711 (1974) (decided under former Code 1933, § 79A-302).

**Cited in** *Baxter v. State*, 134 Ga. App. 286, 214 S.E.2d 578 (1975); *Strong v. State*, 246 Ga. 612, 272 S.E.2d 281 (1980); *Shepard v. Byrd*, 581 F. Supp. 1374 (N.D. Ga. 1984).

### OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the provisions, opinions under Ga. L. 1967, p. 296, and former Code Section 26-4-37 are included in the annotations for this section.

**Board's power to regulate dangerous drugs, but not rabies.** — The control of rabies generally is delegated to county boards of health, and the control of dangerous drugs is vested with the State Board of Pharmacy and the State Drug Inspector. 1975 Op. Att'y Gen. No. 75-23.

**Any law enforcement official who has ob-**

**tained a search warrant may lawfully search for and seize prescriptions retained for inspection by a pharmacy** as required by Georgia law. 1970 Op. Att'y Gen. No. 70-112 (decided under Ga. L. 1967, p. 296).

**Chief Drug Inspector of the board can seize evidence under a warrant and make arrests.** — The Chief Drug Inspector of the State Board of Pharmacy and the Inspector's assistants have the authority to make arrests for violations of Ga. L. 1967, p. 296 (see O.C.G.A. Title 16, Chapter 13, Article 26), and to search and seize evidence necessary



for the presentation before courts of this state or before the State Board of Pharmacy; the Chief Drug Inspector and the Inspector's assistants do not have the authority to seize prescriptions from a pharmacy without properly acquiring a search warrant. 1970 Op. Att'y Gen. No. 70-112 (decided under Ga. L. 1967, p. 296).

**Board's power to regulate dispensing of drugs in hospitals.** — The dispensing of drugs in hospitals by machine or otherwise is a matter which the legislature has left to the State Board of Pharmacy to regulate through

its rule making power. 1969 Op. Att'y Gen. No. 69-85 (decided under Ga. L. 1967, p. 296).

**Board's powers when violator not within its jurisdiction.** — When the alleged violator is without the jurisdiction of the State Board of Pharmacy, the recourse of the board lies in the notification of the federal authorities charged with the enforcement of federal laws in the area of nonmailable items and the regulation of drugs, medicines and poisons. 1969 Op. Att'y Gen. No. 69-121.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 17, 69, 75.

**C.J.S.** — 28 C.J.S., Drugs and Narcotics, §§ 8 et seq., 29 et seq., 41 et seq.

#### **26-4-29. Georgia Drugs and Narcotics Agency; continuance; appointment, requirements, and duties of director; power to make arrests; report of violations of drug laws; dangerous drug list.**

(a) The agency created in 1908 as the Office of the Chief Drug Inspector and known as the Georgia Drugs and Narcotics Agency since 1976 is continued in existence as the Georgia Drugs and Narcotics Agency. This agency shall be a budget unit as defined under Code Section 45-12-7; provided, however, that the agency shall be assigned for administrative purposes only, as defined in Code Section 50-4-3, to the office of the Secretary of State. The Georgia Drugs and Narcotics Agency is authorized by this Code section to enforce the drug laws of this state. The board shall appoint a director who shall be charged with supervision and control of such agency. The agency shall employ the number of personnel deemed necessary to properly protect the health, safety, and welfare of the citizens of this state. Such personnel shall be pharmacists registered in this state when employed as either special agents or the deputy director.

(b) The director shall hold office at the pleasure of the board, and should any vacancy occur in said office for any cause whatsoever, said board shall appoint a successor at a regular or called meeting. The director shall be a pharmacist registered in this state. The salary of the director shall be fixed by the board. The whole time of the director shall be at the disposal of the board. The director, or agency personnel acting on behalf of the director, shall have the duty and the power to:

(1) Visit and inspect factories, warehouses, wholesaling establishments, retailing establishments, chemical laboratories, and such other establishments in which any drugs, devices, cosmetics, and such articles known as family remedies, grocer's drugs, and toilet articles are manufactured, processed, packaged, sold at wholesale, sold at retail, or otherwise held for introduction into commerce;

(2) Enter and inspect any vehicle used to transport or hold any drugs, devices, cosmetics, or any of the articles listed in paragraph (1) of this subsection;

(3) Investigate alleged violations of laws and regulations regarding drugs, devices, cosmetics, or any of the articles listed in paragraph (1) of this subsection;

(4) Take up samples of the articles listed in paragraph (1) of this subsection from any of the said establishments for examination and analysis by the state chemist, or under such person's direction and supervision, as provided by Code Section 26-4-131;

(5) Seize and take possession of all articles which are declared to be contraband under Chapter 13 of Title 16 and Chapter 3 of this title and this chapter and deliver such articles to the agency;

(6) Compel the attendance of witnesses and the production of evidence on behalf of the board via a subpoena issued by the director, when there is reason to believe any violations of laws or regulations concerning drugs, devices, cosmetics, or any of the articles listed in paragraph (1) of this subsection have occurred; and

(7) Perform such other duties as may be directed by the board.

(c)(1) The director, deputy director, and special agents of the Georgia Drugs and Narcotics Agency shall have the authority and power that sheriffs possess to make arrests of any persons violating or charged with violating Chapter 13 of Title 16 and Chapter 3 of this title and this chapter. The deputy director and special agents shall be required to be P.O.S.T. certified peace officers under Chapter 8 of Title 35, the "Georgia Peace Officer Standards and Training Act."

(2) In case of such arrest, the director, deputy director, or any of the special agents shall immediately deliver the person so arrested to the custody of the sheriff of the county wherein the offense is alleged to have been committed. The duty of the sheriff in regard to the person delivered to the sheriff by any such person arrested under power of this Code section shall be the same as if the sheriff had made the original arrest.

(c.1) When the deputy director or a special agent employed by the Georgia Drugs and Narcotics Agency leaves the agency under honorable conditions after accumulating 25 years of service in the agency, as a result of a disability arising in the line of duty, or pursuant to approval by the State Board of Pharmacy, such director or agent shall be entitled to retain his or her weapon and badge pursuant to approval by the State Board of Pharmacy, and, upon leaving the agency, the director of the Georgia Drugs and Narcotics Agency shall retain his or her weapon and badge pursuant to approval by the State Board of Pharmacy.

(d) Except as otherwise provided in this chapter, upon receiving a summary report from agency personnel, the director shall report to the board what have been determined to be violations of the drug laws and rules over which the board has authority. After such reports have been made to the board, the board can instruct the director to:

- (1) Cite any such person or establishment to appear before the cognizant member of the board for an investigative interview;
- (2) Forward such reports to the Attorney General's office for action decided on by the board; or
- (3) Take whatever other action the board deems necessary.

(e) The Georgia Drugs and Narcotics Agency shall compile and submit to the General Assembly during each annual legislative session a list of known dangerous drugs as defined in subsection (a) of Code Section 16-13-71 and any other drugs or devices which the board has determined may be dangerous or detrimental to the public health and safety and should require a prescription, and the Georgia Drugs and Narcotics Agency shall assist the State Board of Pharmacy during each annual legislative session by compiling and submitting a list of substances to add to or reschedule substances enumerated in the schedules in Code Sections 16-13-25 through 16-13-29 by using the guidelines set forth in Code Section 16-13-22.

(1) The State Board of Pharmacy is authorized and directed to publish and distribute the "Dangerous Drug List" as prepared by the Georgia Drugs and Narcotics Agency and the "Georgia Controlled Substances Act" as enacted by law.

(2) The Georgia State Board of Pharmacy shall provide for a fee as deemed reasonable or at no cost, such number of copies of the "Dangerous Drug List" and "Georgia Controlled Substances Act" to law enforcement officials, school officials, parents, and other interested citizens as are required. (Code 1981, § 26-4-29, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26.)

### JUDICIAL DECISIONS

**Editor's notes.** — Some of the cases cited below were decided under former Code 1933, § 79A-208.

**Agents immune from federal civil rights actions.** — Neither a federal civil rights action for damages nor a pendent claim of malicious prosecution may proceed against agents of the Georgia Drug and Narcotics Agency in their official capacities by virtue of the eleventh amendment. *Shepard v. Byrd*, 581 F. Supp. 1374 (N.D. Ga. 1984).

**Department of Public Safety's Division of**

**Investigation investigates drug violations.** — Under the Executive Reorganization Act of 1972, Ga. L. 1972, p. 1015, §§ 19, 20, the functions of the Georgia State Board of Pharmacy relating to alleged violations pertaining to drugs under former Code 1933, § 79A-208 (see O.C.G.A. § 26-4-37 et seq.) were transferred to the Department of Public Safety, and the criminal investigative functions were assigned to the Division of Investigation. *Smith v. State*, 131 Ga. App. 722, 206 S.E.2d 711 (1974).



Cited in *Ward v. State*, 248 Ga. 60, 281 S.E.2d 503 (1981).

### OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the provisions, opinions under Ga. L. 1967, p. 296, and former Code Section 26-4-51 are included in the annotations for this section.

**Any law enforcement official who has obtained a search warrant may lawfully search for and seize prescriptions retained for inspection by a pharmacy** as required by Georgia law. 1970 Op. Att'y Gen. No. 70-112 (decided under Ga. L. 1967, p. 296).

**Right of Chief Drug Inspector with warrant, to seize evidence.** — The Chief Drug Inspector of the State Board of Pharmacy and the Inspector's assistants have the authority to make arrests for violations of O.C.G.A. Title 16, Chapter 13, Article 3 and Ga. L. 1967, p. 296 (see O.C.G.A. Title 16, Chapter 13, Article 2), and to search and

seize evidence necessary for the presentation before courts of this state or before the State Board of Pharmacy; the Chief Drug Inspector and the Inspector's assistants do not have the authority to seize prescriptions from a pharmacy without properly acquiring a search warrant. 1970 Op. Att'y Gen. No. 70-112 (decided under Ga. L. 1967, p. 296).

**Board's recourse to federal authorities when violator not within its jurisdiction.** — When the alleged violator is without the jurisdiction of the State Board of Pharmacy, the recourse of the board lies in the notification of the federal authorities charged with the enforcement of federal laws in the area of nonmailable items and the regulation of drugs, medicines and poisons. 1969 Op. Att'y Gen. No. 69-121 (decided under Ga. L. 1967, p. 296).

### RESEARCH REFERENCES

**C.J.S.** — 28 C.J.S., Drugs and Narcotics, §§ 88, 119.

**ALR.** — Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding, 8 ALR3d 473.

Federal prosecutions based on manufacture, importation, transportation, possession, sale, or use of LSD, 22 ALR3d 1325.

Marijuana, psilocybin, peyote, or similar

drugs of vegetable origin as narcotics for purposes of drug prosecution, 50 ALR3d 1164.

LSD, STP, MDA, or other chemically synthesized hallucinogenic or psychedelic substances as narcotics for purposes of drug prosecution, 50 ALR3d 1284.

Odor of narcotics as providing probable cause for warrantless search, 5 ALR4th 681.

### 26-4-30. Construction of chapter.

This chapter shall not be construed to prohibit the sale by general merchants or other nonpharmacy retailers of nonprescription drugs when sold only in their original and unbroken packages. (Code 1981, § 26-4-30, enacted by Ga. L. 1998, p. 686, § 1.)

ARTICLE 3  
PRACTICE OF PHARMACY

**26-4-40. Unlawful to practice pharmacy without license; exception; fine.**

(a) Except as otherwise provided in this chapter, it shall be unlawful for any individual to engage in the practice of pharmacy unless currently licensed to practice under the provisions of this chapter.

(b) Practitioners authorized under the laws of this state to compound drugs and to dispense drugs to their patients in the practice of their respective professions shall not be required to be licensed under the provisions of this chapter; however, practitioners shall meet the same standards, record-keeping requirements, and all other requirements for the dispensing of drugs applicable to pharmacists.

(c) Any individual who, after hearing, shall be found by the board to have unlawfully engaged in the practice of pharmacy shall be subject to a fine to be imposed by the board for each offense. Each violation of this chapter pertaining to unlawfully engaging in the practice of pharmacy shall also constitute a felony punishable upon conviction thereof by a fine of not less than \$500.00 nor more than \$1,000.00 or by imprisonment for not less than two nor more than five years, or both. (Code 1981, § 26-4-40, enacted by Ga. L. 1998, p. 686, § 1.)

**Code Commission notes.** — Pursuant to substituted for a semicolon at the end of Code Section 28-9-5, in 1998, a period was subsection (a).

**26-4-41. Qualifications for license; examination; internship and other training programs.**

(a) *Qualifications.* To obtain a license to engage in the practice of pharmacy, an applicant for licensure by examination shall:

(1) Have submitted a written application in the form prescribed by the board;

(2) Have attained the age of majority;

(3) Be of good moral character;

(4) Have graduated and received a professional undergraduate degree from a college or school of pharmacy as the same may be approved by the board; provided, however, that, since it would be impractical for the board to evaluate a school or college of pharmacy located in another country, the board may accept a graduate from such a school or college as long as the graduate has completed all requirements of the Foreign Pharmacy Equivalency Certification Program administered by the National Association of Boards of Pharmacy. This shall include successful

completion of all required examinations and the issuance of the equivalency certificate and be based upon an individual evaluation by the board of the applicant's educational experience, professional background, and proficiency in the English language;

(5) Have completed an internship or other program that has been approved by the board or demonstrated to the board's satisfaction that experience in the practice of pharmacy which meets or exceeds the minimum internship requirements of the board;

(6) Have successfully passed an examination or examinations approved by the board; and

(7) Have paid the fees specified by the board for the examination and any related materials and have paid for the issuance of the license.

(b) *Examinations.*

(1) The examination for licensure required under paragraph (6) of subsection (a) of this Code section shall be made available by the board at least two times during each year. The board shall determine the content and subject matter of each examination, and the place, time, and date of administration of the examination;

(2) The examination shall be prepared to measure the competence of the applicant to engage in the practice of pharmacy. The board may employ, cooperate, and contract with any organization or consultant in the preparation and grading of an examination, but shall retain the sole discretion and responsibility for determining which applicants have successfully passed such an examination; and

(3) Any person who takes the board examination and fails the examination may repeat the examination at regular intervals of administration; however, a person may not take the examination more than three times without permission from the board. A person who has taken the board examination and failed the examination for the third time may not practice as a pharmacy intern. A person who takes the board examination and successfully completes the examination must become licensed within two years of the examination date or the results of the examination shall become invalid.

(c) *Internship and other training programs.*

(1) All applicants for licensure by examination shall obtain practical experience in the practice of pharmacy concurrent with or after college attendance or both under such terms and conditions as the board shall determine; and

(2) The board shall establish such licensure requirements for interns and standards for internship or any other experiential program necessary to qualify an applicant for the licensure examination and shall also



determine the qualifications of preceptors used in practical experience programs. (Code 1981, § 26-441, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 277, § 4; Ga. L. 2000, p. 136, § 26.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1998, “Internship and other training programs” was substi-

tuted for “Internship and Other Training Programs” in subsection (c).

### JUDICIAL DECISIONS

**Editor’s notes.** — Some of the cases cited below were decided under former Code 1933, § 84-1313.

**Licensed pharmacist presumed to know effects of habit-forming drugs.** — A pharmacist in this state must be a graduate of a recognized college of pharmacy and must

have had 12 months of practical experience before being licensed; it is thus not necessary to allege that a licensed pharmacist would know the effects of habit-forming drugs. *Morris v. Owen*, 102 Ga. App. 71, 115 S.E.2d 604 (1960) (decided under former Code 1933, § 84-1313).

### OPINIONS OF THE ATTORNEY GENERAL

**Editor’s notes.** — In light of the similarity of the provisions, opinions under former Code 1933, Ch. 84-13, and former Code Section 26-4-72 are included in the annotations for this section.

**Applicants not graduates of recognized schools of pharmacy may not take examination.** — The State Board of Pharmacy may not grant an examination to an applicant who is not a graduate of a recognized school or college of pharmacy. 1945-47 Op. Att’y

Gen. p. 509 (decided under former Code 1933, § 84-1313).

**A person who fails to pass the first pharmacist examination may take another one.** 1950-51 Op. Att’y Gen. p. 143 (decided under former Code 1933, § 84-1314).

**An alien may take examination for a license as a pharmacist but may not be licensed until the alien has become a citizen.** 1948-49 Op. Att’y Gen. p. 330 (decided under former Code 1933, § 84-1311).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 25 Am. Jur. 2d, Drugs and Controlled Substances, § 75.

**C.J.S.** — 28 C.J.S., Drugs and Narcotics, §§ 29, 30, 41.

**ALR.** — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

### 26-442. License transfers for pharmacists licensed in another jurisdiction.

(a) In order for a pharmacist currently licensed in another jurisdiction to obtain a license as a pharmacist by license transfer in this state, an applicant shall:

(1) Complete and file a form applying for licensure with the board, which form shall include the applicant’s name, address, and other such information as prescribed by the board, and, after an investigation by agents acting on behalf of the board, if so requested by the board, produce evidence satisfactory to the board which shows the applicant has the age, moral character, background, education, and experience de-

manded of applicants for registration by examination under this chapter and by the rules and regulations promulgated under this chapter;

(2) Have attained the age of majority;

(3) Be of good moral character;

(4) Have possessed at the time of initial licensure as a pharmacist all qualifications necessary to have been eligible for licensure at that time in this state;

(5) Have presented to the board proof of initial licensure by examination and proof that such license is in good standing;

(6) Have presented to the board proof that any other license granted to the applicant by any other state has not been suspended, revoked, or otherwise restricted for any reason except nonrenewal or for the failure to obtain the required continuing education credits in any state where the applicant is currently licensed but not engaged in the practice of pharmacy;

(7) Have successfully passed an examination by the board on Georgia pharmacy law and board regulations; and

(8) Have paid the fees specified by the board.

(b) No applicant shall be eligible for license transfer unless the state in which the applicant was licensed as a pharmacist also grants licensure transfer to pharmacists duly licensed by examination in this state under like circumstances and conditions.

(c) To obtain a license to engage in the practice of pharmacy in this state, a pharmacist who is a graduate of a pharmacy school or college located in another country must complete all requirements of the Foreign Pharmacy Equivalency Certification Program administered by the National Association of Boards of Pharmacy. This shall include without being limited to successful completion of all required examinations and the issuance of the equivalency certificate, and an individual evaluation by the board of the applicant's proficiency in the English language. Additionally, a foreign pharmacy graduate applicant shall:

(1) Have submitted a written application in the form prescribed by the board;

(2) Have attained the age of majority;

(3) Be of good moral character;

(4) Have possessed at the time of initial licensure as a pharmacist all qualifications necessary to have been eligible for licensure at that time in this state;

(5) Have graduated and been granted a pharmacy degree from a college or school of pharmacy recognized by the National Association of

Boards of Pharmacy Foreign Pharmacy Graduate Examination Committee;

(6) Have successfully passed an examination approved by the board; and

(7) Have paid the fees specified by the board. (Code 1981, § 26-4-42, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 277, § 5.)

### **26-4-43. Temporary licenses.**

A temporary license may be issued by the division director upon the approval of the president of the board if an applicant produces satisfactory evidence of fulfilling the requirements for licensure under this article, except the examination requirement, and evidence of an emergency situation justifying such temporary license. All temporary licenses shall expire at the end of the month during which the first board meeting is conducted following the issuance of such license and may not be reissued or renewed. (Code 1981, § 26-4-43, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 2000, p. 1706, § 19.)

### **26-4-44. Renewal of licenses.**

(a) Each pharmacist shall apply for renewal of his or her license biennially pursuant to the rules and regulations promulgated by the board. A pharmacist who desires to continue in the practice of pharmacy in this state shall file with the board an application in such form and containing such data as the board may require for renewal of the license. Notice of any change of employment or change of business address shall be filed with the division director within ten days after such change. If the board finds that the applicant has been licensed and that such license has not been revoked or placed under suspension and that the applicant has paid the renewal fee, has continued his or her pharmacy education in accordance with Code Section 26-4-45 and the rules and regulations of the board, and is entitled to continue in the practice of pharmacy, then the board shall issue a license to the applicant.

(b) If a pharmacist fails to make application to the board for renewal of his or her license as set forth in and in accordance with the provisions of this chapter, the pharmacist must apply for reinstatement pursuant to the rules of the board. (Code 1981, § 26-4-44, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 2000, p. 1706, § 19.)

#### **26-4-44.1. Inactive license status.**

(a) The board shall provide by rule for an inactive pharmacist license status for those individuals who elect to apply for such status. Persons who



are granted inactive status shall be exempt from the requirements of continuing pharmaceuticals education.

(b) The board shall provide by rule for reactivation of a pharmacist license for those persons who wish to have an active license. Such individuals must first file a reactivation application with the board and comply with the requirements for reactivation as set forth by board rule. (Code 1981, § 26-444.1, enacted by Ga. L. 1999, p. 277, § 6.)

#### **26-445. Continuing professional pharmaceutical education requirements.**

The board shall establish a program of continuing professional pharmaceutical education for the renewal of pharmacist licenses. Notwithstanding any other provision of this chapter, no pharmacist license shall be renewed by the board or the division director until the pharmacist submits to the board satisfactory proof of his or her participation, during the biennium preceding his or her application for renewal, in a minimum of 30 hours of approved programs of continuing professional pharmacy education as defined in this Code section. Continuing professional pharmacy education shall consist of educational programs providing training pertinent to the practice of pharmacy and approved by the board under this Code section. The board shall approve educational programs for persons practicing pharmacy in this state on a reasonable nondiscriminatory fee basis and may contract with institutions of higher learning, professional organizations, or qualified individuals for the providing of approved programs. In addition to such programs, the board shall allow the continuing professional pharmacy education requirement to be fulfilled by the completion of approved correspondence courses which provide the required hours of approved programs of continuing professional pharmaceutical education or to be fulfilled by a combination of approved correspondence courses and other approved educational programs. The board may, consistent with the requirements of this Code section, promulgate rules and regulations to implement and administer this Code section, including the establishment of a committee to prescribe standards, approve and contract for educational programs, and set the required minimum number of hours per year. (Code 1981, § 26-445, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 2000, p. 1706, § 19.)

#### **26-446. Pharmacy interns — Eligibility and requirements for licenses.**

(a) To obtain a license as a pharmacy intern, an applicant shall:

- (1) Have submitted a written application in the form prescribed by the board of pharmacy;
- (2) Have attained the age of majority;
- (3) Be of good moral character; and

(4) Have paid the fees specified by the board for the issuance of the license.

(b) The following individuals shall be eligible to be licensed as a pharmacy intern:

(1) A student who is currently enrolled in an approved school or college of pharmacy;

(2) An individual who is a graduate of an approved school or college of pharmacy who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist; or

(3) An individual who does not meet the requirements of paragraphs (1) and (2) of this subsection and is a graduate of a pharmacy school or college located in another country but who has completed all requirements of the Foreign Pharmacy Equivalency Certification Program administered by the National Association of Boards of Pharmacy. This shall include without being limited to successful completion of all required examinations, the issuance of the equivalency certificate, and an individual evaluation by the board of the applicant's proficiency in the English language.

(c) The board shall approve all internship programs for the purpose of providing the practical experience necessary for licensure as a pharmacist. A pharmacy intern is authorized to engage in the practice of pharmacy under the supervision of a pharmacist. The board shall adopt rules regarding the licensure of interns and the standards for internship programs. (Code 1981, § 26-4-46, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 277, § 7.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1999, "paragraphs" was substituted for "paragraph" in paragraph (b)(3).

#### **26-4-47. Pharmacy interns — Validity of licenses.**

(a) Licenses issued under Code Section 26-4-46 shall bear the date of issuance and shall be valid for up to five years. Unless said license is renewed by the board, the license shall expire.

(b) Any license issued pursuant to Code Section 26-4-46 shall expire at the time a pharmacy intern is expelled, suspended, dismissed, or withdraws from an approved school or college of pharmacy or is otherwise licensed as a pharmacist pursuant to this title.

(c) Any license issued pursuant to Code Section 26-4-46 shall expire upon notification that a person has taken and failed the board examination for the third time. (Code 1981, § 26-4-47, enacted by Ga. L. 1998, p. 686, § 1.)

**26-4-48. Pharmacy interns — Renewal of licenses; exceptions.**

Licenses issued pursuant to Code Section 26-4-46 which shall expire by lapse of time may be renewed upon application, unless, at the time of expiration, there shall be pending action before the board to suspend or revoke such license. (Code 1981, § 26-4-48, enacted by Ga. L. 1998, p. 686, § 1.)

**26-4-49. Drug researcher permits; application for registration; fees; suspension or revocation; penalty for violations.**

(a) Every person, firm, corporation, agency, department, or other entity located within this state which handles, possesses, or utilizes controlled substances or dangerous drugs, as defined in Chapter 13 of Title 16, for the purposes of conducting research, analysis, animal training, or drug education, as such purposes may be further defined by the board, and is not otherwise registered as a pharmacist, pharmacy, drug wholesaler, distributor, supplier, or practitioner shall biennially register with the State Board of Pharmacy for a drug researcher permit which shall entitle the holder thereof to purchase, receive, possess, or dispose of such controlled substances and dangerous drugs for such purposes. In applying for the permit:

(1) The application for registration shall be made on a form to be prescribed and furnished by said board and shall show at a minimum the name of the person responsible for filing the application, the name of the applying firm, corporation, agency, department, or other entity, if applicable, the address where the controlled substances or dangerous drugs will be kept secured and can be inspected by the board, together with such other information as may be required by the board;

(2) The person filing the application for the permit shall be the responsible person for the safe and proper storage and accountability, as defined under Chapter 13 of Title 16, for any and all controlled substances and dangerous drugs. Such person shall be responsible for maintaining exact and accurate records regarding the purchase, receipt, utilization, and disposal of all controlled substances and dangerous drugs utilized for purposes granted by this permit. All records must be maintained for a minimum of two years and be readily available for inspection by agents of the board; and

(3) Before approval by the board for any permit issued under this Code section, the application for registration must successfully undergo a thorough investigation by agents of the board to ensure the applicant complies with all applicable laws, rules, and regulations pursuant to handling controlled substances and dangerous drugs as defined under Chapter 13 of Title 16.

(b) The board may require that the application for registration as a drug researcher be accompanied by a fee in an amount established under rules



promulgated by the board, and the board may establish conditions for exemptions from such fees. Such registration shall not be transferable and shall expire on the expiration date established by the division director and may be renewed pursuant to rules and regulations promulgated by the board. If not renewed, the registration shall lapse and become null and void.

(c) The board shall have the authority to promulgate rules and regulations governing the holder of a drug researcher permit as defined under this Code section.

(d) A drug researcher permit may be suspended or revoked or the registrant may be reprimanded, fined, or placed on probation by the board if the registrant fails to comply with all applicable local, state, or federal laws, rules, and regulations.

(e) A holder of a drug researcher permit who is not also licensed as a pharmacist practicing in a duly licensed pharmacy shall not engage in the sale, distribution, or dispensing of controlled substances or dangerous drugs.

(f) Any person, firm, or corporation which violates any provision of this Code section shall be guilty of a felony and, upon conviction thereof, be punished by imprisonment for not less than one year nor more than five years or by a fine not to exceed \$10,000.00 or both. (Code 1981, § 26-4-49, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2003, p. 140, § 26.)

**The 2003 amendment**, effective May 14, and correct the Code, revised language in 2003, part of an Act to revise, modernize, subsection (a).

#### **26-4-50. Drug therapy modification certification.**

(a) No pharmacist shall be authorized to modify drug therapy pursuant to Code Section 43-34-26.2 unless that pharmacist:

(1) Is licensed to practice as a pharmacist in this state;

(2) Has successfully completed a course of study regarding modification of drug therapy and approved by the board;

(3) Annually successfully completes a continuing education program regarding modification of drug therapy and approved by the board; and

(4) Is certified by the board as meeting the requirements of paragraphs (1) through (3) of this subsection.

(b) Nothing in this Code section shall be construed to expand or change any existing authority for a pharmacist to substitute drugs. (Code 1981, § 26-4-50, enacted by Ga. L. 2000, p. 558, § 1.)

## ARTICLE 4

## DISCIPLINE

**26-4-60. Grounds for suspension, revocation, or refusal to grant licenses.**

(a) The board of pharmacy may refuse to issue or renew, or may suspend, revoke, or restrict the licenses of, or fine any person pursuant to the procedures set forth in this Code section, upon one or more of the following grounds:

(1) Unprofessional conduct as that term is defined by the rules of the board;

(2) Incapacity that prevents a licensee from engaging in the practice of pharmacy with reasonable skill, competence, and safety to the public;

(3) Being guilty of one or more of the following:

(A) A felony;

(B) Any act involving moral turpitude; or

(C) Violations of the pharmacy or drug laws of this state, or rules and regulations pertaining thereto, or of laws, rules, and regulations of any other state, or of the federal government;

(4) Misrepresentation of a material fact by a licensee in securing the issuance or renewal of a license;

(5) Engaging or aiding and abetting an individual to engage in the practice of pharmacy without a license falsely using the title of "pharmacist" or "pharmacy intern," or falsely using the term "pharmacy" in any manner;

(6) Failing to pay the costs assessed in a disciplinary hearing pursuant to subsection (c) of Code Section 26-4-28;

(7) Becoming unfit or incompetent to practice pharmacy by reason of:

(A) Intemperance in the use of alcoholic beverages, narcotics, or habit-forming drugs or stimulants; or

(B) Any abnormal physical or mental condition which threatens the safety of persons to whom such person may compound or dispense prescriptions, drugs, or devices or for whom he or she might manufacture, prepare, or package or supervise the manufacturing, preparation, or packaging of prescriptions, drugs, or devices;

(8) Being adjudicated to be mentally ill or insane;

(9) Violating any rules and regulations promulgated by the board;

(10) Promoting to the public in any manner a drug which may be dispensed only pursuant to prescription;

(11) Regularly employing the mails or other common carriers to sell, distribute, and deliver a drug which requires a prescription directly to a patient; however, this provision shall not prohibit the use of the mails or other common carriers to sell, distribute, and deliver a prescription drug directly to an institution;

(12) Unless otherwise authorized by law, dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the prior authorization of the practitioner ordering or prescribing the same;

(13) Violating or attempting to violate a statute, law, any lawfully promulgated rule or regulation of this state, any other state, the board, the United States, or any other lawful authority without regard to whether the violation is criminally punishable, which statute, law, rule, or regulation relates to or in part regulates the practice of pharmacy, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule; or violating either a public or confidential lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement; or

(14) Having his or her license to practice pharmacy revoked, suspended, or annulled by any lawful licensing authority of this or any other state, having disciplinary action taken against him or her by any lawful licensing authority of this or any other state, or being denied a license by any lawful licensing authority of this or any other state.

(b) The board shall have the power to suspend or revoke the license of the pharmacist in charge when a complete and accurate record of all controlled substances on hand, received, manufactured, sold, dispensed, or otherwise disposed of has not been kept by the pharmacy in conformance with the record-keeping and inventory requirements of federal law and the rules of the board.

(c) Any person whose license to practice pharmacy in this state has been suspended, revoked, or restricted pursuant to this chapter, whether voluntarily or by action of the board, shall have the right, at reasonable intervals, to petition the board for reinstatement of such license pursuant to rules and regulations promulgated by the board. Such petition shall be made in writing and in the form prescribed by the board. The board may, in its discretion, grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications.

(d) Nothing in this Code section shall be construed as barring criminal prosecutions for violations of this chapter.



(e) All final decisions by the board shall be subject to judicial review pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(f) Any individual or entity whose license to practice pharmacy is revoked, suspended, or not renewed shall return his or her license to the offices of the board within ten days after receipt of notice of such action.

(g) For purposes of this Code section, a conviction shall include a finding or verdict of guilty, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon.

(h) Nothing in this Code section shall be construed as barring or prohibiting pharmacists from providing or distributing health or drug product information or materials to patients which are intended to improve the health care of patients.

(i) The board shall have the power to suspend any license issued under Article 3 of this chapter when such holder is not in compliance with a court order for child support as provided in Code Section 19-6-28.1 or 19-11-9.3. The board shall also have the power to deny the application for issuance or renewal of a license under Article 3 of this chapter when such applicant is not in compliance with a court order for child support as provided in either of such Code sections. The hearings and appeals procedures provided for in such Code sections shall be the only such procedures required to suspend or deny any license issued under Article 3 of this chapter.

(j) Nothing in this chapter shall prohibit any person from assisting any duly licensed pharmacist or practitioner in the measuring of quantities of medication and the typing of labels therefor, but excluding the dispensing, compounding, or mixing of drugs, provided that such duly licensed pharmacist or practitioner shall be physically present in the dispensing area and actually observing the actions of such person in doing such measuring and typing, and provided, further, that no prescription shall be given to the person requesting the same unless the contents and the label thereof shall have been verified by a licensed pharmacist or practitioner.

(k) The board shall have the power to suspend any license issued under Article 3 of this chapter when such holder is a borrower in default who is not in satisfactory repayment status as provided in Code Section 20-3-295. The board shall also have the power to deny the application for issuance or renewal of a license under Article 3 of this chapter when such applicant is a borrower in default who is not in satisfactory repayment status as provided in Code Section 20-3-295. The hearings and appeals procedures provided for in Code Section 20-3-295 shall be the only such procedures required to suspend or deny any license issued under Article 3 of this chapter. (Code 1981, § 26-4-60, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26; Ga. L. 1999, p. 277, § 8.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1998, the provisions enacted as subsection (d) of Code Section 26-4-78 by Ga. L. 1998, p. 1094, § 7, were

redesignated as subsection (k) of this Code section and “are” was substituted for “is” near the end of subsection (h).

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the provisions, decisions under Code 1895, § 1729 and former Code 1910, § 1654 are included in the annotations for this section.

**Pharmacy license as defense to drug possession charge.** — Whether an individual has a license or is otherwise lawfully permitted to have in the individual's possession narcotic drugs is a matter of defense and not an element of the offense. *Woods v. State*, 233 Ga. 347, 211 S.E.2d 300 (1974), appeal dismissed, 422 U.S. 1002, 95 S. Ct. 2623, 45 L. Ed. 2d 667 (1975).

**A merchant may not compound medicines.** *Lewis v. Brannen*, 6 Ga. App. 419, 65 S.E. 189 (1909) (decided under former Code 1895, § 1729).

**Licensed pharmacist must be present when drugs sold or made.** — Former Code 1895, § 1729 (see O.C.G.A. § 26-4-60) did does not require owner of drugstore to be licensed if the owner employs a licensed manager, but other members of firm cannot sell drugs or compound prescriptions during absence of manager. *Sconyers v. State*, 6 Ga. App. 804, 65 S.E. 814 (1909) (decided under former Code 1895, § 1729).

**Including all pharmaceutical preparations.** — Former Code 1895, § 1729 (see

O.C.G.A. § 26-4-60), which confines the compounding and vending of drugs and medicines (with only certain enumerated exceptions) to licensed druggists, apothecaries, and pharmacists, relates to all pharmaceutical and medical preparations, whether recognized by the pharmacopoeia and other standard works or not. *Lewis v. Brannen*, 6 Ga. App. 419, 65 S.E. 189 (1909) (decided under former Code 1895, § 1729).

**Employee or proprietor chargeable for selling morphine without prescription.** — One who sells morphine not on the order or prescription of a licensed physician, dentist, or veterinary surgeon, is guilty of a misdemeanor without reference to whether the seller is the proprietor of a drugstore, or merely the employee of such proprietor. *Oppenheim v. State*, 12 Ga. App. 480, 77 S.E. 652 (1913) (decided under former Code 1910, § 1654).

**Indictment showing defendant sold drugs and poisons without license sufficient.** — Indictment charging the defendants with vending drugs and poisons without license contained the necessary allegations and exceptions, and was therefore a good and valid indictment. *Carter v. State*, 122 Ga. 175, 50 S.E. 64 (1905) (decided under former Code 1895, § 1729).

## OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the provisions, opinions under former Code 1933, §§ 79A-410 and 84-1317, are included in the annotations for this section.

**The mailing of prescription drugs by pharmacists employed by the Veterans Administration does not violate Georgia Law** (see O.C.G.A. § 26-4-60). 1973 Op. Att'y Gen. No. 73-59 (decided under former Code 1933, § 79A-410).

**Federal regulations preempt state law against mailing drugs.** — Georgia law had no effect on a federal employee involved in a federal governmental function; because Veterans Administration pharmacists are autho-

rized to dispense prescription drugs by mail, federal policy conflicts with state law; where federal regulations promulgated to carry out federal statutes conflict with a state statute, the former will govern. 1973 Op. Att'y Gen. No. 73-59 (decided under former Code 1933, § 79A-410).

**Anyone not pharmacist or intern may only measure quantities of medication and type labels.** — An individual working in a pharmacy who is neither a licensed pharmacist nor a licensed pharmacy intern may assist a pharmacist only to the extent of measuring the quantities of medication and/or the typing of labels. 1974 Op. Att'y Gen. No.

U74-63 (decided under former Code 1933, § 79A-410).

**Board regulates dispensing of drugs in hospitals by machine or otherwise.** — The dispensing of drugs in hospitals by machine or otherwise is a matter which the Legislature has left to the State Board of Pharmacy to regulate through its rule making power.

1969 Op. Att’y Gen. No. 69-85 (decided under former Code 1933, § 79A-410).

**A merchant may sell home remedies (which probably would include mineral oil) without qualifying as a pharmacist.** 1945-47 Op. Att’y Gen. p. 508 (decided under former Code 1933, § 84-1317).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 25 Am. Jur. 2d, Drugs and Controlled Substances, § 75 et seq.

**C.J.S.** — 28 C.J.S., Drugs and Narcotics, §§ 29 et seq., 42 et seq.

**ALR.** — Revocation or suspension of license or permit to practice pharmacy or operate drugstore because of improper sale or distribution of narcotic or stimulant drugs, 17 ALR3d 1408.

Validity and construction of prescription

drug insurance plans, 42 ALR3d 897.

Common-law right of action for damage sustained by plaintiff in consequence of sale or gift of intoxicating liquor or habit-forming drug to another, 97 ALR3d 528; 62 ALR4th 16.

Right of medical patient to obtain, or physician to prescribe, laetrile for treatment of illness — state cases, 5 ALR4th 219.

### 26-4-61. Temporary suspension of license; notice; disciplinary hearings.

(a) The provisions of subsection (c) of Code Section 50-13-18 with respect to emergency action by a professional licensing board and summary suspension of a license are adopted and incorporated by reference into this Code section.

(b) Whenever a notice of summary suspension, notice of hearing, initial or recommended decision, or final decision of the board in a disciplinary proceeding is docketed, it shall be personally served upon the licensee or applicant or served by certified mail or statutory overnight delivery, return receipt requested, to the last known address of record with the board. If such material is served by certified mail or statutory overnight delivery and is returned marked “unclaimed” or “refused” or is otherwise undeliverable and if the licensee or applicant cannot, after reasonable effort, be located, the director for the board shall be deemed to be the agent for service for such licensee or applicant for purposes of this Code section and service upon the director shall be deemed to be service upon the licensee or applicant.

(c) If any licensee or applicant after reasonable notice fails to appear at any hearing of the board for that licensee or applicant, the board may proceed to hear the evidence against such licensee or applicant and take action as if such licensee or applicant had been present. (Code 1981, § 26-4-61, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26; Ga. L. 1999, p. 277, § 9; Ga. L. 2000, p. 1589, § 3; Ga. L. 2000, p. 1706, § 19.)



**Editor's notes.** — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the amendment to subsection (b) is applicable with respect to notices delivered on or after July 1, 2000.

### **26-4-62. Penalty for violation of chapter.**

Except as otherwise provided in this chapter or in Chapter 13 of Title 16, any violation of this chapter shall constitute a misdemeanor. (Code 1981, § 26-4-62, enacted by Ga. L. 1998, p. 686, § 1.)

## **ARTICLE 5**

### **PRESCRIPTION DRUGS**

**Administrative rules and regulations.** — Drugs and Narcotics Agents Classifications, Qualifications, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Pharmacy, Chapter 480-14.

Electronic Transfer of Prescriptions, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Pharmacy, Chapter 480-32.

### **RESEARCH REFERENCES**

**ALR.** — Liability of pharmacist who accurately fills prescription for harm resulting to user, 44 ALR5th 393.

### **26-4-80. Dispensing; electronically transmitted drug orders; refills; Schedule II controlled substance prescriptions.**

(a) All persons engaging in the practice of pharmacy in this state must be licensed by the board.

(b) Prescription drugs shall be dispensed only pursuant to a valid prescription drug order. A pharmacist shall not dispense a prescription which the pharmacist knows or should know is not a valid prescription.

(c) A prescription drug order may be accepted by a pharmacist or pharmacy intern in written form, orally, via facsimile, or electronically as set forth in this chapter or as set forth in regulations promulgated by the board. Provisions for accepting a prescription drug order for a Schedule II controlled substance are set forth in subsection (l) of this Code section. Prescriptions transmitted either electronically or via facsimile shall meet the following requirements:

(1) Electronically transmitted prescription drug orders shall be transmitted by the practitioner or, in the case of a prescription drug order to be transmitted via facsimile, by the practitioner or the practitioner's agent under supervision of the practitioner, to the pharmacy of the patient's choice with no intervening person or intermediary having access to the prescription drug order;

(2) Prescription drug orders transmitted by facsimile or computer shall include:

(A) In the case of a prescription drug order for a dangerous drug, the complete name and address of the practitioner;

(B) In the case of a prescription drug order for a controlled substance, the complete name, address, and DEA registration number of the practitioner;

(C) The telephone number of the practitioner for verbal confirmation;

(D) The name and address of the patient;

(E) The time and date of the transmission; and

(F) The full name of the person transmitting the order;

(3) An electronically transmitted drug order which meets the requirements of this Code section shall be deemed the original order;

(4) The pharmacist shall exercise professional judgment regarding the accuracy and authenticity of the transmitted prescription drug order consistent with federal and state laws and rules and regulations adopted pursuant to the same;

(5) An electronically transmitted prescription drug order from a prescriber to a pharmacist shall be considered a highly confidential transaction and the said transmission shall not be compromised by interventions, control, change, altering, or manipulation by any other person or party in any manner whatsoever;

(6) Any pharmacist that transmits, receives, or maintains any prescription or prescription refill either orally, in writing, or electronically shall ensure the security, integrity, and confidentiality of the prescription and any information contained therein; and

(7) The board shall promulgate rules and regulations which may provide specific exceptions under this Code section for institutional settings such as hospital pharmacies, nursing home pharmacies, clinic pharmacies, or pharmacies owned or operated directly by health maintenance organizations.

(d) Information contained in the patient medication record or profile shall be considered confidential information as defined in this title. Confidential information may be released to the patient or the patient's authorized representative, the prescriber or other licensed health care practitioners then caring for the patient, another licensed pharmacist, the board or its representative, or any other person duly authorized to receive such information. In accordance with Code Section 24-9-40, confidential

information may be released to others only on the written release of the patient, court order, or subpoena.

(e) Except as authorized under subsection (j) of this Code section, a prescription may not be refilled without authorization. When refills are dispensed pursuant to authorization contained on the original prescription or when no refills are authorized on the original prescription but refills are subsequently authorized by the practitioner, the refill authorization shall be recorded on the original prescription document and the record of any refill made shall be maintained on the back of the original prescription document or on some other uniformly maintained record and the dispensing pharmacist shall record the date of the refill, the quantity of the drug dispensed, and the dispensing pharmacist's initials; provided, however, that an original prescription for a Schedule III, IV, or V controlled substance which contains no refill information may not be authorized to be refilled more than five times or after six months from the date of issuance, whichever occurs first. Authorization for any additional refill of a Schedule III, IV, or V controlled substance prescription in excess of five refills or after six months from the date of issuance of the prescription shall be treated as a new prescription.

(f) When filling a prescription or refilling a prescription which may be refilled, the pharmacist shall exercise professional judgment in the matter. No prescription shall be filled or refilled with greater frequency than the approximate interval of time that the dosage regimen ordered by the prescriber would indicate, unless extenuating circumstances are documented which would justify a shorter interval of time before the filling or refilling of the prescription.

(g) The pharmacist who fills or refills a prescription shall record the date of dispensing and indicate the identity of the dispensing pharmacist on the prescription document or some other appropriate and uniformly maintained record. If this record is maintained on the original prescription document, the original dispensing and any refills must be recorded on the back of the prescription.

(h) When the patient no longer seeks personal consultation or treatment from the practitioner, the practitioner and patient relationship is terminated. A prescription becomes invalid after the practitioner and patient relationship is terminated which is defined as a reasonable period of time not to exceed six months in which the patient could have established a new practitioner and patient relationship as established by the board through the promulgation of rules and regulations.

(i) A written prescription drug order must bear an original signature of the practitioner. A signature stamp or other signature facsimile is not acceptable in lieu of an original signature. When an oral prescription drug order or the oral authorization for the refilling of a prescription drug order



is received which is transmitted by someone other than the practitioner, the name of the individual making the transmission and the date of the transmission must be recorded on the original prescription drug order or other uniform record by the pharmacist receiving the transmission.

(j) A pharmacist licensed by the board may dispense up to a 72 hour supply of a prescribed medication in the event the pharmacist is unable to contact the practitioner to obtain refill authorization, provided that:

(1) The prescription is not for a controlled substance;

(2) In the pharmacist's professional judgment, the interruption of therapy might reasonably produce undesirable health consequences or may cause physical or mental discomfort;

(3) The dispensing pharmacist notifies the practitioner or his or her agent of the dispensing within seven working days after the prescription is refilled pursuant to this subsection;

(4) The pharmacist properly records the dispensing as a separate nonrefillable prescription. Said document shall be filed as is required of all other prescription records. This document shall be serially numbered and contain all information required of other prescriptions. In addition it shall contain the number of the prescription from which it was refilled;

(5) The pharmacist shall record on the patient's record and on the new document the circumstances which warrant such dispensing; and

(6) The pharmacist does not employ this provision regularly for the same patient on the same medication.

(k) All out-patient prescription drug orders which are dispensed shall be appropriately labeled in accordance with the rules and regulations promulgated by the board as follows:

(1) Before an out-patient prescription drug is released from the dispensing area, the prescription drug shall bear a label containing the name and address of the pharmacy, a prescription number, the name of the prescriber, the name of the patient, directions for taking the medication, the date of the filling or refilling of the prescription, the initials or identifying code of the dispensing pharmacist, and any other information which is necessary, required, or, in the pharmacist's professional judgment, appropriate; and

(2) The pharmacist who fills an out-patient prescription drug order shall indicate the identity of the dispensing pharmacist on the label of the prescription drug. Identification may be made by placing initials on the label of the dispensed drug. The label shall be affixed to the outside of the container of the dispensed drug by means of adhesive or tape or any other means which will assure that the label remains attached to the container.

(l) A Schedule II controlled substance prescription in written form signed in indelible ink by the practitioner may be accepted by a pharmacist and the Schedule II controlled substance may be dispensed by such pharmacist. Other Schedule II controlled substance prescription forms may be accepted by a pharmacist and the Schedule II controlled substance may be dispensed by such pharmacist in accordance with regulations promulgated by the board. (Code 1981, § 26-4-80, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26.)

#### RESEARCH REFERENCES

**ALR.** — Civil liability of pharmacist or drug interactions in use of prescription druggists for failure to warn of potential drug, 79 ALR5th 409.

#### **26-4-81. Substitution of generic drugs for name brand drugs.**

(a) In accordance with this Code section, a pharmacist may substitute a drug with the same generic name in the same strength, quantity, dose, and dosage form as the prescribed brand name drug product which is, in the pharmacist's reasonable professional opinion, pharmaceutically equivalent.

(b) If a practitioner of the healing arts prescribes a drug by its generic name, the pharmacist shall dispense the lowest retail priced drug product which is in stock and which is, in the pharmacist's reasonable professional opinion, pharmaceutically equivalent.

(c) Substitutions as provided for in subsections (a) and (b) of this Code section are authorized for the express purpose of making available to the consumer the lowest retail priced drug product which is in stock and which is, in the pharmacist's reasonable professional opinion, both therapeutically equivalent and pharmaceutically equivalent.

(d) Whenever a substitution is made, the pharmacist shall record on the original prescription the fact that there has been a substitution and the identity of the dispensed drug product and its manufacturer. Such prescription shall be made available for inspection by the board or its representative in accordance with the rules of the board.

(e) The substitution of any drug by a registered pharmacist pursuant to this Code section does not constitute the practice of medicine.

(f) A patient for whom a prescription drug order is intended may instruct a pharmacist not to substitute a generic name drug in lieu of a brand name drug.

(g) A practitioner of the healing arts may instruct the pharmacist not to substitute a generic name drug in lieu of a brand name drug by including the words "brand necessary" in the body of the prescription. Such indication of brand necessary must be in the practitioner's own handwriting

and shall not be printed, applied by rubber stamp, or any such similar means.

(h) The substitution of any drug by a registered pharmacist pursuant to this Code section does not constitute the practice of medicine. (Code 1981, § 26-4-81, enacted by Ga. L. 1998, p. 686, § 1.)

**26-4-82. Duties requiring professional judgment; responsibilities of licensed pharmacist.**

(a) In dispensing drugs, no individual other than a licensed pharmacist shall perform or conduct those duties or functions which require professional judgment. It shall be the responsibility of the supervising pharmacist to ensure that no other employee of the pharmacy, including pharmacy technicians, performs or conducts those duties or functions which require professional judgment.

(b) For all prescriptions, it shall be the responsibility of the pharmacist on duty at a facility to ensure that only a pharmacist or a pharmacy intern under the direct supervision of a pharmacist provides professional consultation and counseling with patients or other licensed health care professionals, and that only a pharmacist or a pharmacy intern under the direct supervision of a pharmacist accepts initial telephoned prescription orders or provides information in any manner relative to prescriptions or prescription drugs.

(c) In the dispensing of all prescription drug orders:

(1) The pharmacist shall be responsible for all activities of the pharmacy technician in the preparation of the drug for delivery to the patient;

(2) The pharmacist shall be present and personally supervising the activities of the pharmacy technician at all times;

(3) When electronic systems are employed within the pharmacy, pharmacy technicians may enter information into the system and prepare labels; provided, however, that it shall be the responsibility of the pharmacist to verify the accuracy of the information entered and the label produced in conjunction with the prescription drug order;

(4) When a prescription drug order is presented for refilling, it shall be the responsibility of the pharmacist to review all appropriate information and make the determination as to whether to refill the prescription drug order; and

(5) Pharmacy technicians in the dispensing area shall be easily identifiable.

(d) The board of pharmacy shall promulgate rules and regulations regarding the activities and utilization of pharmacy technicians in pharma-



cies; provided, however, that the pharmacist to pharmacy technician ratio shall not exceed one pharmacist providing direct supervision of three pharmacy technicians. The board may consider and approve an application to increase the ratio in a pharmacy located in a licensed hospital. Such application must be made in writing and must be submitted to the board by the pharmacist in charge of a specific hospital pharmacy in this state. One of the three technicians must:

- (1) Have successfully passed a certification program approved by the board of pharmacy;
- (2) Have successfully passed an employer's training and assessment program which has been approved by the board of pharmacy; or
- (3) Have been certified by either the Pharmacy Technician Certification Board or any other nationally recognized certifying body approved by the board of pharmacy.

(e) In addition to the utilization of pharmacy technicians, a pharmacist may be assisted by and directly supervise one pharmacy intern and one pharmacy extern. (Code 1981, § 26-4-82, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 2002, p. 1492, § 1.)

**The 2002 amendment**, effective July 1, 2002, in subsection (d), substituted "three pharmacy technicians" for "two pharmacy technicians" at the end of the first sentence,

inserted "One of the three technicians must:" at the end of the first paragraph, and added paragraphs (1) through (3).

### **26-4-83. Patient record systems.**

(a) The board of pharmacy may refuse to renew or may suspend, revoke, or restrict the licenses of or fine any person or pharmacy pursuant to the procedures set forth in this Code section and rules and regulations established by the board upon the failure to maintain an appropriate patient record system.

(b) A patient record system shall be maintained by all pharmacies for patients for whom prescription drug orders are dispensed. The patient record system shall provide for the immediate retrieval of information necessary by the pharmacist to identify previously dispensed drugs at the time a prescription drug order is presented for dispensing. The pharmacist or the pharmacist's designee shall make a reasonable effort to obtain, record, and maintain the following information:

- (1) The full name of the patient for whom the drug is intended;
- (2) The address and telephone number of the patient;
- (3) The date of birth of the patient; and
- (4) The gender of the patient.

(c) The pharmacist shall make a reasonable effort to obtain from the patient or the patient's agent and shall record any known allergies, drug reactions, idiosyncrasies, and chronic conditions or disease states of the patient and identify any other drugs, including over-the-counter drugs or devices, currently being used by the patient which may relate to prospective drug use review unless the patient or the patient's agent refuses to provide such information. The pharmacist shall make a reasonable effort to obtain, record, and maintain the following information:

(1) A list of all prescription drug orders obtained by the patient at the pharmacy where the prescription drug order is being filled for at least the preceding two years, showing the prescription number, the name and strength of the drug, the quantity and date dispensed, and the name of the prescribing practitioner; and

(2) Comments from the pharmacist relevant to the individual's drug therapy, including any other information peculiar to the specific patient or drug.

(d) A patient record shall be maintained for a period of not less than two years from the date of the last entry in the profile record. This record may be a hard copy of a computerized form. (Code 1981, § 26-4-83, enacted by Ga. L. 1998, p. 686, § 1.)

**26-4-84. Restriction of license for failure to review patient records and prescription drug orders.**

(a) The board of pharmacy may refuse to renew or may suspend, revoke, or restrict the licenses of or fine any person or pharmacy pursuant to the procedures set forth in this Code section upon the failure to review patient records and prescription drug orders.

(b) A pharmacist shall review the patient record and each prescription drug order presented for dispensing for the purposes of promoting therapeutic appropriateness by identifying:

- (1) Overutilization or underutilization;
- (2) Therapeutic duplications;
- (3) Drug-disease contraindications;
- (4) Drug-drug interactions;
- (5) Incorrect drug dosage, dosage form, or duration of drug therapy;
- (6) Drug-allergy interactions; and
- (7) Clinical abuse or misuse.

(c) Upon recognizing any of the above situations, the pharmacist shall take appropriate steps to avoid or resolve the situation or problem which

shall, if necessary, include consultation with the prescribing practitioner. (Code 1981, § 26-4-84, enacted by Ga. L. 1998, p. 686, § 1.)

**26-4-85. Patient counseling; optimizing drug therapy.**

(a) The board of pharmacy may refuse to renew or may suspend, revoke, or restrict the licenses of or fine any person or pharmacy pursuant to the procedures set forth in this Code section upon the failure to offer to counsel patients.

(b) Upon receipt of a prescription drug order and following a review of the patient's record, the pharmacist or the pharmacy intern operating under the direct supervision of the pharmacist shall personally offer to discuss matters which will enhance or optimize drug therapy with each patient or caregiver of such a patient. Such discussion shall be in person, whenever practicable, or by telephone and shall include appropriate elements of patient counseling, based on the professional judgment of the pharmacist. Such elements may include but are not limited to the following:

(1) The name and description of the drug;

(2) The dosage form, dose, route of administration and duration of therapy;

(3) The intended use of the drug and expected action or result;

(4) Any special directions or precautions for preparation, administration, or use by the patient;

(5) Common severe side effects or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if such side effect, adverse effect, interaction, or therapeutic contraindication occurs;

(6) Techniques for self-monitoring of drug therapy;

(7) The proper storage of the drug;

(8) Prescription refill information;

(9) The action to be taken in the event of a missed dose; and

(10) The comments of the pharmacist relevant to the patient's drug therapy, including any other information peculiar to the specific patient or drug.

(c) Additional forms of patient information may be used to supplement verbal patient counseling when appropriate or available.

(d) Patient counseling, as described in this Code section, shall not be required for:



(1) In-patients of a hospital or institution where other health care professionals are authorized to administer the drug or drugs;

(2) Inmates of corrections institutions where pharmacy services are provided by the Department of Corrections or by a county or municipal political subdivision either directly or by a subcontractor of the above; or

(3) Patients receiving drugs from the Department of Human Resources Division of Public Health; provided, however, that pharmacists who provide drugs to patients in accordance with Code Section 43-34-26.1 shall include in all dispensing procedures a written process whereby the patient or the caregiver of the patient is provided with the information required under this Code section.

(e) A pharmacist shall not be required to counsel a patient or the caregiver of the patient when the patient or the caregiver of the patient refuses such consultation or counseling. (Code 1981, § 26-4-85, enacted by Ga. L. 1998, p. 686, § 1.)

**Code Commission notes.** — Pursuant to graph (b)(4) and “taken” was substituted for Code Section 28-9-5, in 1998, a comma was “take” in paragraph (b)(9). inserted following “administration” in para-

#### **26-4-86. Compounding of medications.**

The board may establish regulations governing the compounding of medication by pharmacists and pharmacies licensed in this state. (Code 1981, § 26-4-86, enacted by Ga. L. 1998, p. 686, § 1.)

#### **26-4-87. Storage and handling of controlled substances and dangerous drugs.**

The board shall promulgate rules and regulations governing the appropriate and proper storage and handling of controlled substances and dangerous drugs as defined in Chapter 13 of Title 16 which are consistent with those standards established by the United States Pharmacopeial Convention. (Code 1981, § 26-4-87, enacted by Ga. L. 1998, p. 686, § 1.)

#### **26-4-88. Restrictions on dispensing of medicines, drugs, or poisons; functions which require the professional judgment of a pharmacist.**

(a) No person shall engage in the dispensing of any medicines, drugs, or poisons unless said person is a pharmacist licensed in accordance with this chapter or a pharmacy intern dispensing such items in accordance with this chapter.

(b) This chapter shall not apply to practitioners of the healing arts prescribing, compounding their own prescriptions, or dispensing drugs or medicines except as provided in Code Section 26-4-130.

(c) Nothing in this Code section shall prohibit any person from assisting any duly licensed pharmacist or practitioner, provided that such duly licensed pharmacist or practitioner shall be physically present in the prescription area and actually observing the actions of such person performing such tasks; provided, further, that no prescription shall be given to the person requesting the same unless the contents and the label thereof shall have been verified by a licensed pharmacist or practitioner.

(d) With respect to pharmacy technicians, the following functions require the professional judgment of a pharmacist, or pharmacy intern under the supervision of a pharmacist, and may not be performed by a pharmacy technician:

- (1) Acceptance of initial oral prescriptions;
- (2) Certification of a filled or finished prescription or prescription drug order;
- (3) Weighing or measuring active ingredients without a mechanism of verification;
- (4) Reconstitution of prefabricated medication without a mechanism of verification;
- (5) Verification of the constituents of final IV admixtures for accuracy, efficacy, and patient utilization;
- (6) Entry of orders on patient medication profiles without verification by a pharmacist; and
- (7) Provision of drug information that has not been prepared or approved by the pharmacist. (Code 1981, § 26-4-88, enacted by Ga. L. 1998, p. 686, § 1.)

#### **26-4-89. Selling drugs in vending machines prohibited.**

Any person who shall sell or dispense drugs by the use of vending machines shall be guilty of a misdemeanor. (Code 1981, § 26-4-89, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26.)

#### **26-4-90. Remuneration for professional pharmacy care services.**

Nothing in this chapter shall be interpreted to prohibit a pharmacist or pharmacy from being remunerated for professional pharmacy care services. (Code 1981, § 26-4-90, enacted by Ga. L. 1998, p. 686, § 1.)

ARTICLE 6  
PHARMACIES

**26-4-110. Pharmacy licenses — Classifications; applications; fees; investigations; prescription department requirements.**

(a) All facilities engaged in the manufacture, production, sale, or distribution of drugs or devices utilized in the practice of pharmacy or pharmacies where drugs or devices are dispensed or pharmacy care is provided shall be licensed by the board and shall biennially renew their license with the board. Where operations are conducted at more than one location, each such location shall be licensed by the board.

(b) The board may by rule determine the licensure classifications of all persons and facilities licensed as a pharmacy under this article and establish minimum standards for such persons and facilities.

(c)(1) The board shall establish by rule, under the powers granted to it under Article 2 of this chapter and as may be required from time to time under federal law the criteria which each person must meet to qualify for licensure as a pharmacy in each classification. The board may issue licenses with varying restrictions to such persons where the board deems it necessary.

(2) All applications for a new license shall be accompanied by a fee. Upon the filing of an application for a license, the board may cause a thorough investigation of the applicant to be made, and, if satisfied that the applicant possesses the necessary qualifications and that the pharmacy will be conducted in accordance with law, shall issue a license.

(d) Each pharmacy shall have a pharmacist in charge. Whenever an applicable rule requires or prohibits action by a pharmacy, responsibility shall be that of the owner and the pharmacist in charge of the pharmacy, whether the owner is a sole proprietor, partnership, association, corporation, or otherwise.

(e) The board may enter into agreements with other states or with third parties for the purpose of exchanging information concerning licensure of any pharmacy.

(f) The board may deny or refuse to renew a pharmacy license if it determines that the granting or renewing of such license would not be in the public interest.

(g) It shall be unlawful for any person in connection with any place of business or in any manner to take, use, or exhibit the title "drug store," "pharmacy," "apothecary," or any combination of such titles or any title or designation of like import or other term to take the place of such title, unless such place of business is licensed as a pharmacy under the provisions



of this chapter, has submitted a written request to the board and received a waiver from this subsection, or meets the provisions of any rule or regulation regarding use of such titles and promulgated by the board.

(h) Every pharmacy licensed under this chapter shall have a prescription department which shall be kept clean and free of all materials not currently in use in the practice of compounding or preparing a medication for dispensing. The space behind the prescription counter shall be kept free of obstruction at all times.

(i) During hours of operation, every pharmacy licensed pursuant to this chapter shall have a prescription department under the personal supervision of a duly licensed pharmacist who shall have personal supervision of not more than one pharmacy at the same time, provided that nothing in this chapter shall be construed to prohibit any pharmacist from having personal supervision of a pharmacy located in a hospital, nursing home, college of pharmacy, or a pharmacy owned and operated directly by a health maintenance organization. Every pharmacy licensed under this chapter, except those located within and owned and operated by a duly licensed and accredited hospital, nursing home, or college of pharmacy or a pharmacy complying with subsection (j) of this Code section, shall have a prescription department open for business at all times that the business establishment is open to the public, except that during temporary absences of any licensed pharmacist not to exceed three hours daily or more than one and one-half hours at any one time the prescription department shall be closed and no prescription shall be filled or dispensed.

(j) If a pharmacy is located in a general merchandising establishment, or if the owner of the pharmacy so chooses, a portion of the space of the business establishment may be set aside and permanently enclosed or otherwise secured. Only that permanently enclosed or otherwise secured area shall be subject to the provisions of this chapter and shall be registered as a pharmacy. In such case, the area to be registered as a pharmacy shall be permanently enclosed with a partition built from the floor to the ceiling or otherwise secured in a manner as provided by the board through rules and regulations. (Code 1981, § 26-4-110, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26; Ga. L. 1999, p. 757, § 1.)

#### **26-4-110.1. Definitions; license required; condition for licensing.**

(a) As used in this Code section, the term:

(1) "Enrollee" means a person eligible to receive health care benefits under a health benefit plan.

(2) "Health benefit plan" means any hospital or medical insurance policy or certificate, health care plan contract or certificate, qualified higher deductible health plan, health maintenance organization subscriber contract, or any managed care plan.

(3) “Insurer” means a corporation or other entity which is licensed or otherwise authorized to offer a health benefit plan in this state.

(4) “Pharmacy benefits manager” means any person, corporation, or other entity that administers the prescription drug, prescription device, or both prescription drug and device portion of a health benefit plan on behalf of an insurer but shall not include any pharmacy benefits manager offered pursuant to Chapter 18 of Title 45 or offered on behalf of recipients of medical assistance under Titles XIX and XXI of the federal Social Security Act.

(b) Every pharmacy benefit manager providing services or benefits in this state which constitutes the practice of pharmacy as defined in Code Section 26-4-4 shall be licensed to practice as a pharmacy in this state and shall comply with those provisions of Code Section 26-4-110, except subsections (h), (i), and (j) thereof. As a condition for licensing, every pharmacy benefit manager shall permit the board or agents or employees thereof to inspect the premises of such pharmacy benefit manager whether those premises are located within or outside this state. (Code 1981, § 26-4-110.1, enacted by Ga. L. 2002, p. 1492, § 2.)

**Effective date.** — This Code section became effective July 1, 2002.

#### **26-4-111. Pharmacy licenses — Minimum standards; transferability.**

(a) The board shall specify by rule the pharmacy licensure procedures to be followed, including but not limited to specification of forms for use in applying for such licensure and times, places, and applicable fees.

(b) Applicants for licensure to distribute, manufacture, sell, purchase, or produce drugs or devices within this state shall file with the board a verified application containing such information as the board requires of the applicant relative to the qualifications for a license.

(c) Pharmacy licenses issued by the board pursuant to this chapter shall not be transferable or assignable.

(d) The board shall specify by rule minimum standards for responsibility of any person or pharmacy that has employees or personnel engaged in the practice of pharmacy, manufacture, distribution, production, sale, or use of drugs or devices in the conduct of their business. If the licensed person is a pharmacy located in this state, that portion of the facility to which such license applies shall be operated only under the direct supervision of a pharmacist licensed to practice in this state. (Code 1981, § 26-4-111, enacted by Ga. L. 1998, p. 686, § 1.)

**26-4-112. Occurrences which require immediate notification to board.**

The board shall be notified immediately upon the occurrence of any of the following:

- (1) Permanent closing of a licensed pharmacy;
- (2) Change of ownership, management, or location of a licensed pharmacy;
- (3) Change of the pharmacist in charge of a licensed pharmacy;
- (4) Any theft or loss of drugs or devices of a licensed pharmacy;
- (5) Any known conviction of any employee of a licensed pharmacy of any state or federal drug laws;
- (6) Disasters, accidents, theft, destruction, or loss of records of a licensed pharmacy required to be maintained by state or federal law;
- (7) Occurrence at a licensed pharmacy of a significant adverse drug reaction as defined by rules of the board; or
- (8) Any and all other matters and occurrences at a licensed pharmacy as the board may require by rule. (Code 1981, § 26-4-112, enacted by Ga. L. 1998, p. 686, § 1.)

**26-4-113. Wholesale distributors; licensing requirements; suspension or revocation of license; reinstatement.**

(a) No person shall operate as a pharmacy until a pharmacy license has been issued to such person by the board.

(b) Except where otherwise permitted by law, it shall be unlawful for a manufacturer, wholesale distributor, or a reverse drug distributor to distribute or deliver drugs or devices to or receive drugs or devices from any person or firm in this state not licensed under this chapter. Any person who distributes or delivers drugs or devices to or receives drugs or devices from a person or firm not licensed under this chapter shall be subject to a fine to be imposed by the board for each offense in addition to such other disciplinary action the board may take under this chapter. Each such violation shall also constitute a misdemeanor.

(c) The board may suspend, revoke, deny, or refuse to renew the pharmacy license of, reprimand, issue a letter of concern to, or fine any person licensed under this article on any of the following grounds:

- (1) The finding by the board of violations of any federal or state laws relating to the practice of pharmacy, drug samples, wholesale or retail drug or device distribution, or distribution of controlled substances;
- (2) Any felony convictions under federal or state laws;



(3) The furnishing of false or fraudulent material in any application made in connection with drug or device manufacturing or distribution;

(4) Suspension or revocation by the federal or state government of any license currently or previously held by the applicant for the manufacture or distribution of any drugs or devices including controlled substances;

(5) Obtaining any remuneration by fraud, misrepresentation, or deception;

(6) Dealing with drugs or devices that are known or should have been known to be stolen drugs or devices;

(7) Purchasing or receiving of a drug or device from a source other than a person or pharmacy licensed under the laws of the state except where otherwise provided;

(8) Wholesale drug distributors, other than pharmacies, dispensing or distributing drugs or devices directly to patients; or

(9) Violations of any of the provisions of this chapter or of any of the rules adopted by the board under this chapter.

(d) Reinstatement of a pharmacy license that has been suspended, revoked, or restricted by the board may be granted in accordance with the rules of the board. (Code 1981, § 26-4-113, enacted by Ga. L. 1998, p. 686, § 1.)

#### **26-4-114. Special pharmacy permits.**

(a) A pharmacy located within and owned and operated by a school or college of pharmacy in this state may apply to the board for a special pharmacy permit which shall entitle the holder thereof to purchase, receive, possess, or dispose of drugs for educational or research purposes. The application shall include the name of a registered pharmacist who shall be responsible for maintaining accurate records regarding the purchase, receipt, possession, and disposal of drugs utilized for educational or research purposes. If the board certifies that the application complies with applicable laws and rules and regulations, the board shall issue the permit.

(b) A holder of a special pharmacy permit under subsection (a) of this Code section shall not engage in the sale or dispensing of drugs.

(c) The board shall have the authority to promulgate rules and regulations governing the holder of a special pharmacy permit under this Code section and may exempt the holder thereof from requirements otherwise applicable to other pharmacies. (Code 1981, § 26-4-114, enacted by Ga. L. 1998, p. 686, § 1.)

**26-4-115. Wholesale drug distributors; registration; fees; reports of excessive purchases; penalty for violations.**

(a) All persons, firms, or corporations, whether located in this state or in any other state, engaged in the business of selling or distributing drugs at wholesale in this state, in the business of supplying drugs to manufacturers, compounders, and processors in this state, or in the business of a reverse drug distributor shall biennially register with the board as a drug wholesaler, distributor, reverse drug distributor, or supplier. The application for registration shall be made on a form to be prescribed and furnished by said board and shall show each place of business of the applicant for registration, together with such other information as may be required by the board. The application shall be accompanied by a fee in an amount established by the board for each place of business registered by the applicant. Such registration shall not be transferable and shall expire on the expiration date established by the division director. Registration shall be renewed pursuant to the rules and regulations of the board and a renewal fee prescribed by the board shall be required. If not renewed, the registration shall lapse and become null and void. Registrants shall be subject to such rules and regulations with respect to sanitation or equipment as the board may, from time to time, adopt for the protection of the public health and safety. Such registration may be suspended or revoked or the registrant may be reprimanded, fined, or placed on probation by the board if the registrant fails to comply with any law of this state, the United States, or any other state having to do with the control of pharmacists, pharmacies, wholesale distribution, or reverse drug distribution of controlled substances or dangerous drugs as defined in Chapter 13 of Title 16; if the registrant fails to comply with any rule or regulation promulgated by the board; or if any registration or license issued to the registrant under the federal act is suspended or revoked.

(b) Every drug wholesaler, distributor, or supplier registered as provided in Chapter 13 of Title 16 or in subsection (a) of this Code section, except reverse drug distributors, shall:

(1) Submit reports, upon request from the Georgia Drugs and Narcotics Agency, to account for all transactions with licensed persons or firms located within this state; such reportable transactions shall include all dangerous drugs and controlled substances as defined in Chapter 13 of Title 16. Such reports shall be submitted to the Georgia Drugs and Narcotics Agency; and

(2) Automatically submit reports of any excessive purchases of controlled substances by licensed persons or firms located within this state using the federal Drug Enforcement Administration guidelines to define "excessive purchases" as set forth under the provisions of 21 C.F.R. Sec. 1301. Such reports shall be submitted to the Georgia Drugs and Narcotics Agency.

(c) The board shall be authorized to promulgate rules and regulations to facilitate compliance with this Code section. Such rules and regulations shall include a requirement that all wholesale drug distributors required to register pursuant to this Code section shall make adequate provision for the return of outdated drugs, both full and partial containers, for up to six months after the labeled expiration date for prompt full credit or replacement.

(d) The provisions of subsection (b) of this Code section shall not apply to any wholesaler, manufacturer, distributor, or supplier who only ships controlled substances directly to a licensed wholesaler within this state.

(e) Any person, firm, or corporation which violates any provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than five years or by a fine not to exceed \$25,000.00, or both.

(f) Any practitioner who knowingly transfers any controlled substance or dangerous drug as such terms are defined in Chapter 13 of Title 16 by purchasing from or returning to a person, firm, or corporation which is not registered as required in subsection (a) of this Code section or as required in Chapter 13 of Title 16 shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than three years or by a fine not to exceed \$10,000.00, or both. (Code 1981, § 26-4-115, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2002, p. 1492, § 3.)

**The 2002 amendment**, effective July 1, 2002, added the last sentence in subsection (c).

**26-4-115.1. Requirement that certain wholesale distributors of controlled substances and dangerous drugs provide price and quantity information.**

Every wholesale distributor registered as provided in Chapter 13 of Title 16 or subsection (a) of Code Section 26-4-115, except those which are exclusively reverse drug distributors, shall provide to the Department of Community Health such information, with regard to the controlled substances and dangerous drugs which are distributed by that wholesale distributor, as is determined by that department to be necessary or useful in the department's efficient administration of the state plan for medical assistance, as defined in Code Section 49-4-141, and in the department's determination of possible violations of Chapter 13 of Title 16, which information shall include but not be limited to price and quantity information. (Code 1981, § 26-4-115.1, enacted by Ga. L. 2001, p. 816, § 6.1.)



**Effective date.** — This Code section became effective April 27, 2001.

**26-4-116. Emergency service providers; contracts with issuing pharmacy; record keeping; inspections.**

(a) Dangerous drugs and controlled substances as defined under Chapter 13 of Title 16 shall only be issued to the medical director of an emergency service provider from a pharmacy licensed in this state only in accordance with the provisions of this Code section.

(b) The medical director of an emergency service provider and the issuing pharmacy must have a signed contract or agreement designating the issuing pharmacy as the provider of drugs and consultant services and a copy must be filed with the state board and the Department of Human Resources prior to any drugs being issued. The medical director of an emergency service provider may only have one contractual relationship with one pharmacy per county serviced by such emergency service provider.

(c) A manual of policies and procedures for the handling, storage, labeling, and record keeping of all drugs must be written, approved, and signed by the medical director of an emergency service provider and the pharmacist in charge of the issuing pharmacy. The manual shall contain procedures for the safe and effective use of drugs from acquisition to final disposition.

(d) A written record of all drugs issued to the medical director of an emergency service provider must be maintained by the issuing pharmacy and emergency service provider. Agents of the Georgia Drugs and Narcotics Agency may review all records to determine the accuracy and proper accountability for the use of all drugs.

(e) To provide for the proper control and accountability of drugs, a written record of all drugs used by such emergency service provider shall be provided to the issuing pharmacy within 72 hours of use.

(f) A pharmacist from the contracting issuing pharmacy shall physically inspect the drugs of such emergency service provider to determine compliance with appropriate policies and procedures for the handling, storage, labeling, and record keeping of all drugs not less than annually and maintain records of such inspection for a period of not less than two years. Such an inspection shall, at a minimum, verify that:

(1) Drugs are properly stored, especially those requiring special storage conditions;

(2) Drugs are properly accounted for by personnel of such emergency service provider;

(3) Proper security measures to prohibit unauthorized access to the drugs are implemented; and

(4) All policies and procedures are followed and enforced.

(g) All outdated, expired, unused, or unusable drugs shall be returned to the issuing pharmacy for proper disposition in a manner acceptable to the board. (Code 1981, § 26-4-116, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26.)

**26-4-117. Duty to prosecute violations.**

(a) It shall be the duty of the prosecuting attorney of the court of competent jurisdiction to whom the board or some other person shall report a violation of this chapter to cause appropriate proceedings to be commenced and prosecuted for the enforcement of the penalties as in such case may be provided.

(b) The board, or any person, corporation, or association, in addition to the remedies set forth in this chapter, may bring an action in a court having competent jurisdiction over the parties and subject matter to enjoin violations of this chapter. Such injunction may issue notwithstanding the existence of an adequate remedy at law. (Code 1981, § 26-4-117, enacted by Ga. L. 1998, p. 686, § 1.)

**ARTICLE 7**

**PRACTITIONERS OF THE HEALING ARTS**

**26-4-130. Dispensing drugs; compliance with labeling and packaging requirements; records available for inspection by board; renewal of licenses.**

(a) For purposes of this Code section, the term:

(1) “Drugs” means drugs as defined in this chapter and controlled substances as defined in Article 2 of Chapter 13 of Title 16.

(2) “Practitioner” or “practitioner of the healing arts” means, notwithstanding Code Section 26-4-5, a person licensed as a dentist, physician, podiatrist, or veterinarian under Chapter 11, 34, 35, or 50, respectively, of Title 43.

(b) The other provisions of this chapter and Article 3 of Chapter 13 of Title 16 shall not apply to practitioners of the healing arts prescribing or compounding their own prescriptions and dispensing drugs except as provided in this Code section. Nor shall such provisions prohibit the administration of drugs by a practitioner of the healing arts or any person under the supervision of such practitioner or by the direction of such practitioner except as provided in this Code section. Any term used in this subsection and defined in Code Section 43-34-26.1 shall have the meaning provided for such term in Code Section 43-34-26.1. The other provisions of

this chapter and Articles 2 and 3 of Chapter 13 of Title 16 shall not apply to persons authorized by Code Section 43-34-26.1 to order, dispense, or administer drugs when such persons order, dispense, or administer those drugs in conformity with Code Section 43-34-26.1. When a person dispenses drugs pursuant to the authority delegated to that person under the provisions of Code Section 43-34-26.1, with regard to the drugs so dispensed, that person shall comply with the requirements placed upon practitioners by subsections (c) and (d) of this Code section.

(c) All practitioners who dispense drugs shall comply with all record-keeping, labeling, packaging, and storage requirements imposed upon pharmacists and pharmacies with regard to such drugs pursuant to this chapter and Chapter 13 of Title 16.

(d) All practitioners who dispense drugs shall make all records required to be kept under subsection (c) of this Code section available for inspection by the board.

(e) Any practitioner who desires to dispense drugs shall notify, at the time of the renewal of that practitioner's license to practice, that practitioner's respective licensing board of that practitioner's intention to dispense drugs. That licensing board shall notify the board regarding each practitioner concerning whom that board has received a notification of intention to dispense drugs. The licensing board's notification shall include the following information:

(1) The name and address of the practitioner;

(2) The state professional license number of the practitioner;

(3) The practitioner's Drug Enforcement Administration license number; and

(4) The name and address of the office or facility from which such drugs shall be dispensed and the address where all records pertaining to such drugs shall be maintained.

(f) The board shall have the authority to promulgate rules and regulations governing the dispensing of drugs pursuant to this Code section.

(g) This Code section shall not apply to practitioners who provide to their patients at no cost manufacturer's samples of drugs. (Code 1981, § 26-4-130, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 2000, p. 1706, § 24.)

#### **26-4-131. Examination of food, drug, and cosmetic specimens; violations of federal law.**

The examination of specimens of foods, drugs, and cosmetics shall be made by the state chemist or under direction of that chemist and supervision for the purpose of determining from such examination



whether such articles are adulterated or misbranded within the meaning of this title; and, in the case of drugs and cosmetics, if it shall appear from any such examination that any such specimens are adulterated or misbranded within the meaning of this title, a copy of the results of the analysis of the examination of such article, duly authenticated by the analyst or officer making such examination under the oath of such analyst or officer, shall be forwarded to the board without delay. If it shall appear to the satisfaction of the board and the Attorney General, in the case of adulterated or misbranded drugs, that the article involved was shipped in interstate commerce or the act complained of comes under the supervision and jurisdiction of the United States, the board shall certify the case to the United States district attorney in whose district the violation may have been committed. (Code 1981, § 26-4-131, enacted by Ga. L. 1998, p. 686, § 1.)

## ARTICLE 8

### THIRD-PARTY PRESCRIPTION PROGRAMS

#### JUDICIAL DECISIONS

**Preemption by federal law.** — The Georgia Third Party Prescription Program Law of 1983, (see O.C.G.A. § 26-4-140 et seq.) affects employee benefit plans protected by the Employee Retirement Income Security

Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001, et seq., and is therefore preempted by the federal act. *GMC v. Caldwell*, 647 F. Supp. 585 (N.D. Ga. 1986).

#### 26-4-140. Short title.

This article shall be known and may be cited as the “Third-party Prescription Program Law of 1983.” (Code 1981, § 26-4-140, enacted by Ga. L. 1998, p. 686, § 1.)

#### 26-4-141. Legislative findings.

The General Assembly finds that certain practices are unfair to providers of pharmaceuticals, are burdensome and costly to those providers, result in unfair increased costs to certain consumers, and threaten the availability of pharmaceuticals to the public. The General Assembly further finds that there is a need for regulation of certain practices engaged in by some third-party prescription program administrators. (Code 1981, § 26-4-141, enacted by Ga. L. 1998, p. 686, § 1.)

#### 26-4-142. Definitions.

As used in this article, the term:

(1) “Administrator” means that person, corporation, or business entity which administers a program, is legally liable for any payments to a participating pharmacy under a program, or both.

(2) "Commissioner" means the Commissioner of Insurance.

(3) "Contract" means a program contract.

(4) "Enrollee" means a consumer who receives pharmaceuticals under a program.

(5) "Participating pharmacy" means a pharmacy having a contract to provide pharmaceuticals to enrollees under a program.

(6) "Pharmaceuticals" means drugs, devices, or services available from a pharmacy.

(7) "Prevailing rate" means the average wholesale price of the pharmaceutical during the applicable period, plus the usual, customary, and reasonable dispensing fee added thereto, provided that in no event shall the amount submitted for reimbursement by a pharmacy under this article exceed the eighty-fifth percentile of the retail prices charged by all pharmacies in Georgia for the same or similar pharmaceuticals during such period of time or the actual price charged by the submitting pharmacy to consumers, other than enrollees, for the same or similar pharmaceuticals during such period of time, whichever is less.

(8) "Program" means a third-party prescription program.

(9) "Program contract" means that contract creating rights and obligations between a participating pharmacy and a program or administrator.

(10) "Program identification card" means a document which identifies enrollees as participants in a program.

(11) "Third-party prescription program" means any system of providing payments or reimbursement of payments made for pharmaceuticals pursuant to a contract between a pharmacy and another party, including insurance companies and administrators of programs, who are not consumers of the pharmaceuticals under that contract and shall include, without being limited to, insurance plans whereby an enrollee receives pharmaceuticals which are paid for by insurance companies or administrators, or by an agent of his employer, or by others. (Code 1981, § 26-4-142, enacted by Ga. L. 1998, p. 686, § 1.)

#### **26-4-143. Approval of program by Commissioner; exemptions.**

(a) Unless the program is exempt under subsection (b) of this Code section, no administrator, person, corporation, or business entity shall offer, operate, or administer a program in this state unless that program has been submitted to the Commissioner, in a manner provided by the Commissioner, and is approved by the Commissioner as complying with the requirements of this article.

(b)(1) A program contract existing immediately prior to January 1, 1984, shall be exempt from the requirements of this article but shall not be renewed or otherwise extended beyond its renewal or expiration date, respectively, as specified immediately prior to January 1, 1984, unless the program under the renewed or extended contract is approved by the Commissioner under subsection (a) of this Code section, except that if no such expiration or renewal date is provided in that program contract, the program contract shall be submitted not later than March 1, 1984, to the Commissioner for approval.

(2) A program providing pharmaceuticals pursuant to Article 7 of Chapter 4 of Title 49, the "Georgia Medical Assistance Act of 1977," shall be exempt from the requirements of this article.

(3) A policy or plan regulated under Title 33, relating to insurance, which does not include or utilize a third-party prescription program or contract shall be exempt from the requirements of this article.

(c) A program approved by the Commissioner may have that approval revoked or suspended if it fails to meet any requirements therefor specified in this article or if it fails to be administered in conformity with those requirements.

(d) Disapproval or revocation or suspension of approval of a program by the Commissioner shall constitute a contested case for purposes of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1981, § 26-4-143, enacted by Ga. L. 1998, p. 686, § 1.)

**26-4-144. Participating pharmacies; claim reimbursements; cancellation of contracts.**

(a) A program offered in this state and not exempt under subsection (b) of Code Section 26-4-143 shall provide all of the following:

(1) A statement of the method, frequency, and amount of claim reimbursement to participating pharmacies;

(2) That any valid claim for pharmaceuticals under this program will be paid to a participating pharmacy within 30 days after the claim is received by the administrator if that claim is complete, accurate, and legible, as determined by the administrator;

(3) That any valid claim not paid as required in paragraph (2) of this Code section shall be subject to interest at the rate specified in paragraph (1) of subsection (b) of Code Section 33-25-10, relating to payment of interest on life insurance proceeds;

(4) That reimbursement rates for pharmaceuticals shall not be less than the prevailing rates therefor paid by consumers who are not enrollees;



(5) That each participating pharmacy and enrollee will be notified in writing by the administrator of the cancellation of any program at least 30 days prior to the effective date of cancellation, except that where the administrator is not notified of such cancellation at least 30 days prior to the effective date of cancellation, the written notice shall be provided within 30 days after the administrator received his or her notification;

(6) That program identification cards issued to an enrollee show an expiration date;

(7) That the administrator shall make reasonable efforts to gain possession of all program identification cards upon cancellation of a program for which the cards were issued;

(8) That a valid claim by a participating pharmacy will not be denied upon the basis of the fraudulent use of a program identification card;

(9) That at least 30 days prior to the date a program becomes effective, the program contract therefor shall be offered to all pharmacies located within those counties wherein reside enrollees in that program, which pharmacies shall have at least 30 days from the time they receive the offer to accept that offer and become participating pharmacies;

(10) That any audit by a program to verify claims by a participating pharmacy shall comply with generally accepted accounting principles and procedures but shall not extrapolate randomly sampled data as a basis for reimbursement from the pharmacy which is audited or from one participating pharmacy to be the corresponding data for another participating pharmacy. In the event a claim against a participating pharmacy for reimbursement is based upon a program audit, the administrator of the program shall submit details of the audit to that participating pharmacy, and any dispute relating thereto shall be resolved under the dispute resolution procedures required under paragraph (11) of this subsection, with the Commissioner to render a final binding decision in the dispute if either party is dissatisfied with the outcome under the dispute resolution procedure; and

(11) A dispute resolution procedure for disputes between the program or administrator and participating pharmacies and between the program or administrator and enrollees.

(b) A program which meets the requirements of subsection (a) of this Code section shall not be administered except in conformity with those requirements, and the administration of that program except in conformity with those requirements shall constitute a violation of this Code section by the administrator of that program. (Code 1981, § 26-4-144, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26.)

#### **26-4-145. Excessive charges to enrollees prohibited.**

A participating pharmacy shall not submit claims for payment for pharmaceuticals under a program for charges in excess of those charged by

that pharmacy to consumers, other than enrollees, for the same or similar pharmaceuticals. (Code 1981, § 26-4-145, enacted by Ga. L. 1998, p. 686, § 1.)

**26-4-146. Administrator; registration; bond.**

(a) On and after January 1, 1984, no person, corporation, or business entity shall serve as administrator of a program which has no administrator registered under this Code section unless that person, corporation, or business entity is registered as administrator of that program with the Commissioner.

(b) No administrator may be registered unless the administrator gives bond to the Commissioner conditioned to pay all losses, damages, and expenses incurred as a result of any violation of this article by the administrator or the program being administered thereby. The bond shall be with a surety approved by the Commissioner in the amount of \$200,000.00 or the total annual payments made in the immediately preceding year by all programs administered by that administrator, whichever is greater; provided, however, if the administrator is an insurance company licensed to transact insurance in this state or if the administrator is a self-insurer and is approved by the Commissioner, then such administrator shall not be required to give bond to the Commissioner.

(c) No program shall be required to have more than one administrator registered and bonded under this Code section.

(d) An administrator may have his or her registration suspended or revoked by the Commissioner upon any violation of this article by the administrator or when any program administered by the administrator fails to conform to the requirements of this article. The refusal by the Commissioner to register an administrator and the suspension or revocation of an administrator's registration shall constitute a contested case for purposes of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(e) Records, information, and other identifying matter obtained through the submission of a claim for reimbursement by a participating pharmacy shall be used exclusively and solely for the purposes of verification and payment to the participating pharmacy and policyholder and for no other purposes. (Code 1981, § 26-4-146, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26.)

**26-4-147. Liability of enrollees.**

No enrollee may utilize a program identification card to obtain pharmaceuticals after the program has been canceled and after the enrollee has received notification of the cancellation, and if such card is so utilized, that enrollee shall be liable to the administrator of that program for the cost of

those pharmaceuticals. (Code 1981, § 26-4-147, enacted by Ga. L. 1998, p. 686, § 1.)

**26-4-148. Violations of article; penalties.**

(a) Any person, corporation, or business entity which violates subsection (a) of Code Section 26-4-146 shall be guilty of a misdemeanor.

(b) Any person, corporation, or business entity which violates any provision of this article shall be subject to a civil penalty in the amount of \$1,000.00 for each act in violation of this article or, if the violation was knowing and willful, a civil penalty of \$5,000.00 for each act in violation of this article.

(c) Any person injured as a result of a violation of this article may bring an action against that person, corporation, or business entity violating this article for the recovery of all actual damages occurring as a result thereof, plus attorneys' fees.

(d) An action may be brought against any person, corporation, or business entity subject to civil penalties or an action for damages under this Code section in the county in this state in which the person resides or corporation or business entity maintains an office or, if neither residing nor maintaining an office in this state, in the Superior Court of Fulton County.

(e) All penalties and remedies provided in this Code section are cumulative of each other and of any other penalties and remedies otherwise provided by law. (Code 1981, § 26-4-148, enacted by Ga. L. 1998, p. 686, § 1.)

**ARTICLE 9**

**POISONS**

**26-4-160. Sales and labeling.**

No person shall furnish by retail sale any poison enumerated in this Code section without distinctly labeling the bottle, box, vessel, or paper in which the poison is contained, and also the outside wrapper or cover thereof, with the name of the article, the word "Poison," and the name and place of business of the person who furnishes the same; and no poison shall be furnished unless upon due inquiry it shall be found that the person to whom it is delivered is aware of its poisonous character and shall represent that it is to be used for a legitimate purpose:

(1) Schedule "A." Arsenic and its preparations, corrosive sublimate, white precipitate, red precipitate, biniodide of mercury, cyanide of potassium, hydrocyanic acid, strychnia, and all other poisonous vegetable alkaloids and their salts; essential oil of bitter almonds, opium and its



preparations, except paregoric and other preparations of opium containing less than two grains to the ounce; and

(2) Schedule "B." Aconite, belladonna, colchicum, conium, nuxvomica, henbane, creosote, digitalis, and their pharmaceutical preparations; croton oil, chloroform, chloral hydrate, sulfate of zinc, mineral acids, carbolic acid, and oxalic acid. (Code 1981, § 26-4-160, enacted by Ga. L. 1998, p. 686, § 1.)

#### **26-4-161. Procedure on sale or delivery of listed poisons.**

No licensed pharmacist shall sell or deliver any of the poisons included in paragraph (1) of Code Section 26-4-160 without first making an entry in a book for that purpose, stating the date of the delivery, the name and address of the person receiving the poison, the name and quantity of the poison, the purpose for which it is represented by such person to be required, and the name of the dispenser. Such book shall always be open for inspection by the proper authorities and shall be preserved for reference for at least five years. (Code 1981, § 26-4-161, enacted by Ga. L. 1998, p. 686, § 1.)

#### **26-4-162. Prescriptions by practitioners of the healing arts.**

This article shall not apply to the dispensing of poisons in not unusual quantities or doses, upon the prescriptions of practitioners of the healing arts. (Code 1981, § 26-4-162, enacted by Ga. L. 1998, p. 686, § 1.)

#### **26-4-163. Penalty for violation of article.**

Any person violating this article shall be guilty of a misdemeanor. (Code 1981, § 26-4-163, enacted by Ga. L. 1998, p. 686, § 1.)

### **ARTICLE 10**

#### **NUCLEAR PHARMACY LAW**

#### **26-4-170. Short title.**

This article shall be known and may be cited as the "Nuclear Pharmacy Law." (Code 1981, § 26-4-170, enacted by Ga. L. 1999, p. 277, § 10.)

#### **26-4-171. Definitions.**

As used in this article, the term:

(1) "Authentication of product history" means, but is not limited to, identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical.

(2) "Board" means the State Board of Pharmacy.

(3) "Compounding of radiopharmaceuticals" means the addition of a radioactive substance to nonradioactive substances or the use of a radioactive substance in preparation for single or multidose dispensation upon the prescription order of a physician who is licensed to use radioactive materials. Compounding of radiopharmaceuticals may include: loading and eluting of radionuclide generators; using manufactured reagent kits to prepare radiopharmaceuticals; preparing reagent kits; aliquoting reagents; formulation and quality assurance testing of radiochemicals for use as radiopharmaceuticals; and radiolabeling of compounds or products, including biological products, for use as radiopharmaceuticals.

(4) "Department" means the Department of Natural Resources.

(5) "Internal test assessment" means, but is not limited to, conducting those tests of quality assurance necessary to ensure the integrity of the test.

(6) "Manufacturing of radiopharmaceuticals" means the preparation, derivation, or production of a product to which a radioactive substance is or will be added to provide a radiopharmaceutical for sale, resale, redistribution, or reconstitution.

(7) "Nuclear pharmacy" means a pharmacy providing radiopharmaceutical service.

(8) "Radiopharmaceutical" means radioactive drugs and chemical products used for diagnostic and therapeutic purposes and includes the terms radioactive pharmaceuticals, radioisotopes, and radioactive tracers.

(9) "Radiopharmaceutical quality assurance" means, but is not limited to, the performance of appropriate chemical, biological, and physical tests on radiopharmaceuticals and their component materials and the interpretation of the resulting data to determine their suitability for use in humans and animals, including internal test assessment, authentication of product history, and the keeping of proper records.

(10) "Radiopharmaceutical service" means, but is not limited to, the compounding, dispensing, labeling, and delivering of radiopharmaceuticals; the participation in radiopharmaceutical selection and radiopharmaceutical utilization review; the maintenance of radiopharmaceutical quality assurance; and the responsibility for advising, where necessary or where regulated, of therapeutic values, hazards, and use of radiopharmaceuticals; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of a nuclear pharmacy. (Code 1981, § 26-4-171, enacted by Ga. L. 1999, p. 277, § 10.)

**26-4-172. License requirements generally.**

(a) All persons, firms, pharmacies, or corporations which receive, possess, transfer, or manufacture for sale or resale radiopharmaceuticals shall be licensed in accordance with the provisions of this article. No person may receive, acquire, possess, compound, or dispense any radiopharmaceutical except in accordance with the provisions of this article and the conditions of rules and regulations promulgated by the Board of Natural Resources for radioactive materials and administered by the department. The requirements of this article are in addition to, and not in substitution of, other applicable statutes and regulations administered by the State Board of Pharmacy or the department.

(b) Nothing in this article shall be construed as requiring a licensed physician to obtain a separate license as a nuclear pharmacist, when his or her use of radiopharmaceuticals is limited to the diagnosis and treatment of his or her own patients.

(c) Nothing in this article shall be construed so as to require a licensed clinical laboratory, which is licensed by the Department of Human Resources to handle radioactive materials, to obtain the services of a nuclear pharmacist, or to have a nuclear pharmacy license, unless the laboratory is engaged in the commercial sale or resale of radiopharmaceuticals.

(d) Nothing in this article shall be construed to require a department of nuclear medicine which is located in a hospital of 250 beds or less, which has a board certified radiologist in the practice of nuclear medicine, and which is licensed by the department to handle radioactive materials to obtain the services of a nuclear pharmacist or to have a nuclear pharmacy license. (Code 1981, § 26-4-172, enacted by Ga. L. 1999, p. 277, § 10.)

**26-4-173. Applicant requirements.**

(a) An applicant for a license as a nuclear pharmacist shall:

(1) Be a currently licensed pharmacist in the State of Georgia;

(2) Meet the minimum requirements and be licensed to possess and use radioactive materials for medical use, as authorized by the department; and

(3) Have met all requirements for training and experience established by the board in rules and regulations promulgated pursuant to this authority; provided, however, rules and regulations prescribing training and experience requirements for nuclear pharmacists shall have first been approved by the department.

(b) A license as a nuclear pharmacist shall be issued to any pharmacist who makes application to the board, together with a required fee, and



meets the requirements of subsection (a) of this Code section. (Code 1981, § 26-4-173, enacted by Ga. L. 1999, p. 277, § 10.)

**26-4-174. Nuclear pharmacy operators permit; separate entity; quality; maintain records; compliance of laws; authorized dispensing; transfer; labeling; redistribution.**

(a) A permit to operate a nuclear pharmacy shall only be issued in accordance with Article 6 of this chapter with the added designation that the pharmacist in charge be a nuclear pharmacist. All personnel performing tasks in the preparation and distribution of radiopharmaceuticals shall be under the supervision of a licensed nuclear pharmacist. All acts of compounding and dispensing radiopharmaceuticals shall be performed by the nuclear pharmacist or by a pharmacist or pharmacy intern under the direct supervision and control of a nuclear pharmacist. A nuclear pharmacist shall be responsible for all operations of the nuclear pharmacy and shall be in personal attendance at all times when the acts of compounding and dispensing are performed and the pharmacy is open for business.

(b) Nuclear pharmacies shall have adequate space, commensurate with the scope of services provided and, as required by rules and regulations promulgated by the board pursuant to implementation of this article, shall meet minimal space requirements established for all pharmacies in the state. The nuclear pharmacy area shall be separate from the pharmacy areas for nonradiopharmaceuticals and shall be secured from unauthorized personnel.

(c) Nuclear pharmacies shall only dispense radiopharmaceuticals which comply with acceptable professional standards of radiopharmaceutical quality assurance.

(d) Nuclear pharmacies shall maintain records of acquisition and disposition of all radiopharmaceuticals in accordance with requirements of the board and the department.

(e) Nuclear pharmacies shall comply with all applicable laws and regulations of federal and state agencies, including those laws and regulations governing nonradioactive drugs and pharmaceuticals.

(f) Radiopharmaceuticals are to be dispensed only upon prescription order by a physician who is authorized by the department to possess, use, and administer radioactive materials.

(g) A nuclear pharmacist may transfer to authorized persons radioactive materials not intended for drug use, in accordance with department regulations for radioactive materials. A nuclear pharmacy may also furnish radioactive materials for use to physicians, for individual patient use in accordance with subsection (f) of this Code section.

(h) In addition to any labeling requirements required by rules and regulations of the board for nonradiopharmaceuticals, the immediate outer container of a radiopharmaceutical to be dispensed shall also be labeled as required in rules and regulations of the board and of the department.

(i) The amount of radioactivity dispensed in each individual preparation shall be determined by the nuclear pharmacist through radiometric methods immediately prior to dispensing.

(j) Nuclear pharmacies may redistribute federal Food and Drug Administration approved radiopharmaceuticals if the pharmacy does not process the radiopharmaceuticals in any manner or violate the product packaging. Such redistribution may only be made to another nuclear pharmacy or other authorized person or institution. (Code 1981, § 26-4-174, enacted by Ga. L. 1999, p. 277, § 10.)

#### **26-4-175. Meeting requirements of the board.**

Nuclear pharmacies shall meet all requirements for items and articles of equipment as required through rules and regulations of the board. Nuclear pharmacies shall also have equipment required for the safe handling and storage of radioactive materials, as established by rules of the department. (Code 1981, § 26-4-175, enacted by Ga. L. 1999, p. 277, § 10.)

#### **26-4-176. Limiting, suspending, or revoking license.**

The board may limit, suspend, or revoke licenses issued under the provisions of this article, or impose any other reasonable sanctions upon holders of such licenses upon proof of any of the violations specified in Code Sections 26-4-60 and 26-4-113. (Code 1981, § 26-4-176, enacted by Ga. L. 1999, p. 277, § 10.)

#### **26-4-177. Board refusing to grant license.**

The board may refuse to grant a license to any person, firm, or corporation for any of the grounds set forth in Code Sections 26-4-60 and 26-4-113. In addition, the board may refuse to grant a license if any applicant shall make any false statement in the application or cheats in any manner upon any examination administered pursuant to this article. (Code 1981, § 26-4-177, enacted by Ga. L. 1999, p. 277, § 10.)

#### **26-4-178. Authorized to promulgate rules.**

The board is authorized to promulgate rules and regulations to implement the provisions of this article. (Code 1981, § 26-4-178, enacted by Ga. L. 1999, p. 277, § 10.)

**26-4-179. Authority of department.**

Nothing in this article shall be construed to repeal the authority of the Department of Natural Resources to regulate the use of radioactive materials. (Code 1981, § 26-4-179, enacted by Ga. L. 1999, p. 277, § 10.)



CHAPTER 5

DRUG ABUSE TREATMENT AND EDUCATION PROGRAMS

Sec.		Sec.	
26-5-1.	Short title.	26-5-12.	Records of drug dependent persons treated or advised.
26-5-2.	Legislative intent.	26-5-13.	Inspection of programs.
26-5-3.	Definitions.	26-5-14.	Denial, suspension, or revocation of licenses.
26-5-4.	Classification of programs.	26-5-15.	Notice of proposed denial, suspension, or revocation; hearing.
26-5-5.	Promulgation of minimum standards of quality and services for each class of programs.	26-5-16.	Applicability of "Georgia Administrative Procedure Act."
26-5-6.	Promulgation of rules and regulations.	26-5-17.	Confidentiality of records, names, and communications.
26-5-7.	License required.	26-5-18.	Injunctions; nuisances per se.
26-5-8.	Application for license.	26-5-19.	Penalty.
26-5-9.	Provisional licenses.	26-5-20.	Priority admissions policy for drug dependent pregnant females.
26-5-10.	Issuance of license; revocation or suspension.		
26-5-11.	Conditions for issuance of license; nontransferability.		

**Cross references.** — Hospitalization and treatment of alcoholics, drug dependent individuals, and drug abusers, Ch. 7, T. 37.

**Law reviews.** — For comment, "Solving the Problem of Prenatal Substance Abuse: An Analysis of Punitive and Rehabilitative Approaches," see 39 Emory L.J. 1401 (1990).

26-5-1. Short title.

This chapter shall be known and may be cited as the "Drug Abuse Treatment and Education Act." (Ga. L. 1972, p. 714, § 1.)

26-5-2. Legislative intent.

The purpose of this chapter is to provide for the classification and systematic evaluation of various programs designed for the treatment and therapeutic rehabilitation of drug dependent persons; to ensure that every governing body which operates a drug abuse treatment and education program is licensed to do so; and to meet the rehabilitative needs of drug dependent persons while safeguarding their individual liberties. (Ga. L. 1972, p. 714, § 2; Ga. L. 1985, p. 476, § 1; Ga. L. 1991, p. 94, § 26.)

**Law reviews.** — For note, "The Diversion of Drug Abusers from the Criminal Justice System: Georgia's Proposed Legislation," see 23 Emory L.J. 1071 (1974).

**26-5-3. Definitions.**

As used in this chapter, the term:

(1) "Department" means the Department of Human Resources or its successor.

(2) "Drug abuse treatment and education program" means any system of treatment or therapeutic advice or counsel provided for the rehabilitation of drug dependent persons and shall include programs offered in the following types of facilities:

(A) Residential care centers. A facility staffed by professional and paraprofessional persons offering treatment or therapeutic programs for drug dependent persons who live on the premises; and

(B) Nonresidential care centers. A non-live-in facility, staffed by professional and paraprofessional persons, offering treatment or therapeutic programs for drug dependent persons who do not live on the premises.

(3) "Drug dependent person" means a person who is in imminent danger of becoming dependent upon or addicted to the use of drugs or who habitually lacks self-control as to the use of drugs or who uses drugs to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted.

(4) "Drugs" means any substance defined as a drug by federal or Georgia law or any other chemical substance which may be used in lieu of a drug to obtain similar effects, with the exception of alcohol and its derivatives.

(5) "Governing body" means the county board of health, the partnership, the corporation, the association, or the person or group of persons who maintains and controls the program and who is legally responsible for the operation.

(6) "License" means the official permit issued by the director which authorizes the holder to operate a drug abuse treatment and education program for the term provided therein.

(7) "Licensee" means any person holding a license issued by the director under this chapter.

(8) "Program" means the drug abuse treatment and education program. (Ga. L. 1972, p. 714, § 3; Ga. L. 1982, p. 3, § 26; Ga. L. 1985, p. 476, § 2; Ga. L. 1991, p. 94, § 26.)

**26-5-4. Classification of programs.**

The department is authorized to classify all programs within the state according to the character and range of services provided. (Ga. L. 1972, p. 714, § 4; Ga. L. 1985, p. 476, § 3.)

**26-5-5. Promulgation of minimum standards of quality and services for each class of programs.**

The department shall create and promulgate minimum standards of quality and services for each designated class of programs. At least the following areas shall be covered in the rules and regulations:

- (1) Adequate and safe buildings or housing facilities where programs are offered;
- (2) Adequate equipment for the delivery of programs;
- (3) Sufficient trained or experienced staff who are competent in the duties they are to perform;
- (4) The content and quality of services to be provided;
- (5) Requirements for intake, discharge, and aftercare of drug dependent persons;
- (6) Referral to other appropriate agencies;
- (7) Continuing evaluation of the effectiveness of programs;
- (8) Maintenance of adequate records on each drug dependent person treated or advised;
- (9) A formal plan of cooperation with other programs in the state to allow for continuity of care for drug dependent persons; and
- (10) Criteria for providing priority in access to services and admissions to programs for drug dependent pregnant females. (Ga. L. 1972, p. 714, § 5; Ga. L. 1985, p. 476, § 4; Ga. L. 1991, p. 94, § 26; Ga. L. 1991, p. 977, § 1.)

**RESEARCH REFERENCES**

<b>Am. Jur. 2d.</b> — 63C Am. Jur. 2d, Public Officers and Employees, § 66.	<b>C.J.S.</b> — 73 C.J.S., Public Administrative Law and Procedure, § 50.
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**26-5-6. Promulgation of rules and regulations.**

The department is authorized and directed to create and promulgate all rules and regulations necessary for the implementation of this chapter. (Ga. L. 1972, p. 714, § 12; Ga. L. 1985, p. 476, § 5.)

**RESEARCH REFERENCES**

<b>Am. Jur. 2d.</b> — 63C Am. Jur. 2d, Public Officers and Employees, § 66.	<b>C.J.S.</b> — 73 C.J.S., Public Administrative Law and Procedure, § 50.
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**26-5-7. License required.**

No governing body shall operate a drug abuse treatment and education program without having a valid license or provisional license issued pursuant to this chapter. (Ga. L. 1972, p. 714, § 6; Ga. L. 1985, p. 476, § 6.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 51 Am. Jur. 2d, Licenses and Permits, §§ 14, 77.

**C.J.S.** — 53 C.J.S., Licenses, §§ 30, 34.

**ALR.** — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

**26-5-8. Application for license.**

(a) Application for a license to operate a program shall be submitted by the governing authority to the department in the manner prescribed by rules and regulations and shall contain a comprehensive outline of the program to be offered by the applicant.

(b) Proof of compliance with all applicable federal and state laws for the handling and dispensing of drugs and all state and local health, safety, sanitation, building, and zoning codes shall be attached to the application submitted to the department. (Ga. L. 1972, p. 714, §§ 7, 8; Ga. L. 1985, p. 476, § 7.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 51 Am. Jur. 2d, Licenses and Permits, §§ 80, 81, 85.

**C.J.S.** — 53 C.J.S., Licenses, § 43.

**26-5-9. Provisional licenses.**

The department may issue a provisional license effective for a period not to exceed 90 days to each applicant who has substantially complied with all requirements for a regular license. Provisional licenses shall be renewed in the discretion of the department only in cases of extreme hardship and in no case for longer than 90 days. The obligations and conditions of a provisional license shall be the same as those of a regular license except as otherwise provided for in this chapter. (Ga. L. 1972, p. 714, § 9; Ga. L. 1985, p. 476, § 8.)

**26-5-10. Issuance of license; revocation or suspension.**

The department may, upon submission of an application, with proof of accreditation by a voluntary accreditation agency approved by the department, issue a license based upon the findings of the accreditation agency.

The license may be issued without an on-site visit by the department representative. Any denial, suspension, or revocation of the voluntary accreditation agency shall result in an automatic revocation or suspension of the license issued under this Code section, and the holder must apply for a new license as provided for in this chapter. (Ga. L. 1972, p. 714, § 10; Ga. L. 1985, p. 476, § 9.)

#### **26-5-11. Conditions for issuance of license; nontransferability.**

The department shall issue a license to a governing body for any program which meets all the rules and regulations for the class of license applied for. The license shall be nontransferable for a change of location or governing body. (Ga. L. 1972, p. 714, § 11; Ga. L. 1985, p. 476, § 10.)

#### **RESEARCH REFERENCES**

**Am. Jur. 2d.** — 51 Am. Jur. 2d, Licenses and Permits, §§ 3, 53.      **C.J.S.** — 53 C.J.S., Licenses, §§ 37, 49.

#### **26-5-12. Records of drug dependent persons treated or advised.**

Subject to the limitations of Code Section 26-5-17, the department may require at reasonable intervals, and each licensee shall furnish copies of complete records of each drug dependent person treated or advised pursuant to a program. (Ga. L. 1972, p. 714, § 14; Ga. L. 1985, p. 476, § 11; Ga. L. 1991, p. 94, § 26.)

#### **26-5-13. Inspection of programs.**

Each licensee shall permit the authorized department representatives to enter upon and inspect any and all premises upon or in which a program is to be conducted or for which a license has been applied so that verification of compliance with all relevant laws or regulations can be made. (Ga. L. 1972, p. 714, § 15; Ga. L. 1985, p. 476, § 12.)

#### **RESEARCH REFERENCES**

**Am. Jur. 2d.** — 51 Am. Jur. 2d, Licenses and Permits, §§ 80, 81, 85.

#### **26-5-14. Denial, suspension, or revocation of licenses.**

The department may deny any license applied for under this chapter that does not fulfill the minimum requirements which the department may prescribe by rules and regulations and may suspend or revoke a license which has been issued if an applicant or a licensee violates any of such rules and regulations; provided, however, that before any order is entered

denying a license applied for or suspending or revoking a license previously granted, the applicant or license holder, as the case may be, shall be afforded an opportunity for a hearing as provided for in Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” (Ga. L. 1972, p. 714, § 16; Ga. L. 1985, p. 476, § 13.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 51 Am. Jur. 2d, Licenses and Permits, § 88 et seq.      **C.J.S.** — 53 C.J.S., Licenses, § 50 et seq.

#### **26-5-15. Notice of proposed denial, suspension, or revocation; hearing.**

Notice of a proposed denial, suspension, or revocation of a license shall be provided in writing by the department to any licensee so affected within 90 days after the application is filed or the grounds are discovered. Within ten days from receipt of such notice, the licensee so affected may request a hearing before the department. Upon receipt of such request for hearing in proper form, the department shall schedule a hearing within a reasonable time, but not later than 90 days. (Ga. L. 1972, p. 714, § 17; Ga. L. 1985, p. 476, § 14.)

#### RESEARCH REFERENCES

**C.J.S.** — 53 C.J.S., Licenses, § 50 et seq.

#### **26-5-16. Applicability of “Georgia Administrative Procedure Act.”**

The promulgation of rules and regulations, the conduct of administrative hearings, and judicial review of the department’s actions shall be subject to Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” (Ga. L. 1972, p. 714, § 13; Ga. L. 1985, p. 476, § 15.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, § 231.

#### **26-5-17. Confidentiality of records, names, and communications.**

For the purpose of providing more effective treatment and rehabilitation, the records and name of any drug dependent person who seeks or obtains treatment, therapeutic advice, or counsel from any program licensed under this chapter shall be confidential and shall not be revealed except to the extent authorized in writing by the drug dependent person affected; furthermore, any communication by such drug dependent person to an authorized employee of any holder of a license shall be deemed confidential; provided, however, that, except for matters privileged under other laws



of this state, the records of such person and information about such person shall be produced in response to a valid court order of any court of competent jurisdiction after a full and fair show-cause hearing and in response to a departmental request for access for licensing purposes when such request is accompanied by a written statement that no record of patient identifying information will be made. (Ga. L. 1972, p. 714, § 18; Ga. L. 1985, p. 476, § 16; Ga. L. 1986, p. 10, § 26; Ga. L. 1991, p. 94, § 26.)

**Law reviews.** — For comment, “The Defining the Professional Involved,” see 34 Psychotherapist-Client Testimonial Privilege: Emory L.J. 777 (1985).

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26-5-18. Injunctions; nuisances per se.

The department is authorized to enforce this chapter and the rules and regulations promulgated under this chapter by injunction. Any violation of this chapter or any rule or regulation promulgated under this chapter shall be a nuisance per se; and it shall not be necessary to allege or prove the exhaustion of remedies at law to obtain an injunction under this Code section. (Ga. L. 1972, p. 714, § 19; Ga. L. 1985, p. 476, § 17.)

RESEARCH REFERENCES

**C.J.S.** — 73 C.J.S., Public Administrative Law and Procedure, § 100. 73A C.J.S., Public Administrative Law and Procedure, § 159.

26-5-19. Penalty.

Any person who violates this chapter shall be guilty of a misdemeanor. (Ga. L. 1972, p. 714, § 20.)

26-5-20. Priority admissions policy for drug dependent pregnant females.

Any program licensed or funded by the department under this chapter shall implement a priority admissions policy for the treatment of drug dependent pregnant females which provides for immediate access to services for any such female applying for admission, which access shall be contingent only upon the availability of space. (Code 1981, § 26-5-20, enacted by Ga. L. 1991, p. 977, § 2.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1993, a comma was inserted following the word “admission” near the end of this Code section.



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